This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

+ *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.

+ *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.

+ *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.

+ *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at `http://books.google.com/`

STANFORD LAW
LIBRARY

IN
MEMORY OF
HENRY VROOMAN

B 1-1
Appl
2 of 2

FAMOUS CASES

OF

CIRCUMSTANTIAL EVIDENCE.

WITH AN INTRODUCTION

ON THE

THEORY OF PRESUMPTIVE PROOF.

BY

S. M. PHILLIPPS,

AUTHOR OF "PHILLIPPS ON EVIDENCE."

SECOND EDITION.—REVISED AND ENLARGED.

BOSTON:

ESTES & LAURIAT,

143 WASHINGTON STREET.

1874.

CONTENTS.

PAGE

INTRODUCTION ..... vii–xxix

CASE I. The Old Woman of the Place St. Michel 1
II. Case of John Jennings 4
III. Case of James Harris 11
IV. Case of Soren Qvist 14
V. Case of Thomas Geddely 31
VI. Case of Lesurques 33
VII. Case of Thomas Williams 45
VIII. Case of Professor Webster 47
IX. Case of William Harrison 50
X. Case of Thomas Wood 53
XI. Case of Count Montgomery 57
XII. Case of Le Brun 65
XIII. Case of Eliza Fenning 73
XIV. Case of Richard Coleman 78
XV. Case of William Shaw 85
XVI. Case of Du Moulin 89
XVII. Case of the Schmidts 97
XVIII. Case of Mistaken Medical Testimony 113
XIX. Case of James Baxwell 117
XX. Case of John Miles 125

		PAGE
CASE XXI.	The Obstinate Juryman	129
XXII.	Case of John Hawkins and George Simpson	132
XXIII.	A Man Wrongly Convicted of Parricide	136
XXIV.	Case of Mistaken Medical Testimony	139
XXV.	The Evidence of Torture	141
XXVI.	Case of Jonathan Bradford	144
XXVII.	Case of Leavitt Alley	149
XXVIII.	The Blue Dragoon	154
XXIX.	The Miller's Niece	190
XXX.	The Boorn Case	216
XXXI.	Henry Ranthorpe	221
XXXII.	Case of Andrew Mirelees	227
XXXIII.	Case of Taantje	237
XXXIV.	Case of a German Boor	254
XXXV.	Case of a Negro Murderer	267
XXXVI.	Case of Erroneous Execution for Murder	270
XXXVII.	Case of Youth Betrayed	272
XXXVIII.	Murder of a Father	275
XXXIX.	Case of Martin Guerre	279

W. Y.

THE THEORY

OF

PRESUMPTIVE PROOF.

THERE is no branch of legal knowledge which is of more general utility, than that which regards the rules of evidence. The first point in every trial, is to establish the facts of the case; for he who fails in his proof, fails in every thing. Although the jurists hold the law to be always fixed and certain, yet the discovery of the fact, they say, may deceive the most skillful. No work has as yet appeared in the English language on the theory of evidence; and the nature of circumstantial evidence has been still less inquired into. The object of the present Essay is to inquire into some of the more general principles of legal proof, and particularly into that species of proof which is founded on presumptions, and is known to the English lawyer by the name of circumstantial evidence.

1801

Evidence and proof are often confounded, as implying the same idea; but they differ, as cause and effect. Proof is the legal credence which the law gives to any statement, by witnesses or writings; evidence is the legal process by which that proof is made. Hence, we say, that the law admits of no proof but such as is made agreeably to its own principles.

The principles of evidence are founded on our observations on human conduct, on common life, and living manners: they are not just because they are rules of law; but they are rules of law because they are just and reasonable.

It has been found, from common observation, that certain circumstances warrant certain presumptions. Thus, that a

mother shall feel an affection for her child,—that a man shall be influenced by his interest,—that youth shall be susceptible of the passion of love,—are laws of our general nature, and grounds of evidence in every country. Of the two women who contended for their right to the child, she was declared to be the mother who would not consent to its being divided betwixt them. When *Lothario* tells us that he stole alone, at night, into the chamber of his mistress, "hot with the Tuscan grape, and high in blood!" *Cætera quis nescit?*

As the principles of evidence are founded on the observations of what we have seen, or believed to have been passing in real life, they will accordingly be suited to the state of the society in which we live, or to the manners and habits of the times. The following passage, in the excellent memoirs of *Philip de Comines*, I believe to be perfectly true, because it is confirmed by other accounts of the general state of manners at the period when he wrote.

Louis XI. distributed, he asserts, for corrupt purposes, sixteen thousand crowns among the King of England's officers that were about his person, particularly to the chancellor, the master of the rolls, the lord chancellor, &c.*

The truth of this narrative has never been called in question, because it is given by an historian of great gravity and character, and is illustrated by the manners of the age; yet although the author says that his design in writing of these transactions, is to show the method and conduct of all human affairs, by the reading of which such persons as are employed in the negotiation of great matters, may be instructed how to manage their administrations, we should find it difficult to give credence to such facts, if related of any modern lord high chancellor or officer of state of the court of England. Thus, the same presumptive evidence that is good as to the court of Edward IV. and the era of 1477, is altogether extravagant if applied to the court of George III and the beginning of the 19th century.

* V. 2. p. 7.

The oration of Cicero for Cluentius, exhibits evidence of judicial corruption which can only be credited from our general knowledge of Roman manners at the era of the facts which he describes.

The King of Siam gave credence to everything which a European ambassador told him, as to the circumstances and condition of Europe. until he came to acquaint him, that the rivers and sea were occasionally made so hard, by the cold, that people could walk on them; but this story he totally disbelieved and rejected, as entirely repugnant to every thing which he had either seen or heard; and the ground of his disbelief was perfectly rational.

A similar principle sways our belief in respect to the acts of individuals, as arising in the society and period in which we live. We always refer the credibility of the case to what has fallen within our own observation and experience of men and things. We readily give credence to acts of common occurrence, and are slow in yielding our assent to the existence of new and unlooked for events. When a wretch, at no distant period, in affluent circumstances, was accused of having stolen some sheets of paper in a shop, the judges admitted him to bail against evidence, because the charge was altogether unlikely in one of his condition in life. From these instances, we may safely infer that the principles for our believing or disbelieving any fact, are rather governed by the manners and habits of society, than by any positive rule. The writers on the general law of evidence, such as Mascardus and Menochius, have accordingly declared that all proof is arbitrary, and depends on the feelings of the judges.

There are two species of presumptive proof: the first is the presumption of the law, and the second the presumption of the judge, juryman, or trier.

The presumption of the law is that conclusion which the law attaches to a certain species of guilt. Thus, that he who has deliberately and willfully killed another, has done so from malice, is a presumption of the law. But how far he who has

been found with the sword in his hand by the body of the man just killed, did or did not give the mortal stroke, is a presumption to be made by the jury, and is not determinable by any positive rule of law.

The presumption of the law, Montesquieu observes, is preferable to that of man. The French law considers every act of a merchant, during the ten days preceding his bankruptcy, as fraudulent; this is the presumption of the law.

The modern French code has wisely decreed, that when the law, on account of circumstances, shall have deemed certain acts fraudulent, proof shall not be admitted that they were done without fraud. And in our own, as in every other system of legislation, a variety of qualities are presumed as to different persons and things, against which no proof shall be allowed. Certainty is the great object of legislation, and nothing could be established but by the determination of some thing as already fixed.

All proof is in reference to some fact already known and admitted,—what is doubtful must be proved in reference to what is true.

The following rules, by Quintilian, proceed upon this principle, but they are, perhaps, rather curious than useful:—*One thing is, because another is not:* it is day, therefore it is not night. *One thing is, therefore another is:* the sun is risen, therefore it is day. *One thing is not, therefore another is:* it is not night, therefore it is day. *One thing is not, therefore another is not:* he is not rational, therefore not a man.

Evidence is divided into positive and presumptive. Positive evidence is where the witness swears distinctly to the commission of the act or crime which forms the subject of the trial. Presumptive evidence is that conclusion which the jury draw for themselves, from circumstances or minor facts, as sworn to by the witnesses.

Presumptions are consequences drawn from a fact that is known to serve for the discovery of the truth of a fact that is

uncertain, and which one seeks to prove. But no presumption can be made but on a fact already known and ascertained. Thus, if the stains of blood on the coat of one tried for murder, are to be presumed as evidence of his guilt, the fact of the stains being occasioned by blood must be first distinctly ascertained; the one presumption cannot be made to aid the other.

The stains are not to be presumed from blood because he is presumed to have been the murderer; nor, on the other hand, is he to be believed the murderer, because the stains are believed to be from blood; for this is reasoning in a circle, and returning back to the point whence the argument commenced. In laws, the arguments should be drawn from one reality to another, and not from reality to figure, or from figure to reality.

Whilst dwelling on the general head of proof, it may be proper to inquire in what does proof naturally consist. Is one witness, according to the principles of natural reason, sufficient to give legal credence, or are two witnesses necessary?

The Roman or civil law has required two witnesses to each separate fact.

But this principle did not, perhaps, arise from the dictates of legal prudence, but was borrowed from a text of Scripture: "In the mouth of two or three shall the truth be established." The text was meant merely to carry reference to certain circumstances incident to the Christian religion. But the principles of religion are happily founded on higher evidence than is necessary to guide men in the business of common life.

The incidents of commerce, and the daily intercourse of mankind require not only that moral certainty which we are warranted, from general observations, to confide in. It were superfluous to show how difficult it must be, nay, how impossible, often, to prove a crime by two witnesses. The absurdity and inconveniency of the rule has been attended with that

effect which will always attend an inconvenient law; a variety of shifts have been invented to evade it. One witness is held sufficient to a fact of a general nature, and half proofs have been established.

If the rules of evidence are founded on the principles of human nature; if, like other rules, their fitness is to be judged of by their practical utility, it must be admitted that a proof by one witness, or by circumstances, in certain cases, is good and reasonable.

It is true, that by the English law of high treason, that is, by the 25th of Edward the Third, two witnesses are required to convict a prisoner of the charge: that is to say, one witness to one fact, and another to a different fact, of the same species of treason, shall be held to be two witnesses within the meaning of the statute. But this law was passed for the security of the subject, and to guard against the overbearing influence of the crown in state prosecutions; and it is no doubt in reference to crimes against the state, that Montesquieu has made the following observation:—"Those laws which condemn a man to death, on the deposition of a single witness, are fatal to liberty. In right reason there should be two; because a witness who affirms, and the accused who denies, make an equal balance, and a third must incline the scale."*—Besides, the observation is made by a writer speaking in reference no doubt to the *civil law*, where there is no jury to estimate the weight due to the evidence. In the present Essay, it is not meant to inquire, what crimes should be liable to the punishment of death, and what not; it is only proposed to inquire, what degree of proof is sufficient to satisfy the mind of the commission of the act. The principle in law is clear, that the guilt is neither increased nor diminished by the fullness or defect of the proof.

When, it will be asked, shall a proof be said to complete? The answer must be,—when the judges are satisfied; if the

* Spirit of Laws, b. 12, c. 3.

process be regular. For what is implied by the term to prove?

The jurists acquaint us, that to prove is to convince the judge.

Probare est fidem facere judici. And this is the meaning assigned to the term by the English language. The common saying, as used in argument, where a fact is disputed,—*I will prove this to you,—I will convince you of this,—I will satisfy you on this head,*—sufficiently show, that to prove, only implies, to convince another of the truth of our assertions.

The proof must be held to be complete, on the part of the prosecutor, when he produces the best evidence which the case will afford, and such as shall induce the judges to believe the commission of the fact, until it is refuted by opposite evidence on the part of the defendant:* one story is good, until another is told. Where the evidence is believed, and is sufficient to account for the fact, no other proof is necessary.

Hypothetical reasonings are susceptible of the highest degree of evidence, when the *hypothesis* explains many *phenomena,* and contradicts none; and, when every other *hypothesis* is inconsistent with some of the *phenomena.* And this is the principle on which the philosophy of Sir Isaac Newton, as to the motion of the heavenly bodies, is founded.

Where there is no reason, *not* to believe; that, alone, is a reason for believing the evidence of our senses.

The senses are ever true, but the understanding often reasons ill. It is not proper to reject a probable opinion, without establishing a better in the room of it.

But these remarks are, after all, but barren generalities; and the observation of the great writers on this subject, will too often be found to be just,—that all proof is arbitrary, and cannot be reduced to positive rules. It happens, sometimes,

* Indeed, the proof is complete, on the part of the prosecution, when the best evidence has been produced. That is to say, the proof should be made to rest there, whatever the probable effect of the evidence on the court may or may not be.

that the most probable things are false; for, if they were always separated from falsehood, they would be certain, and not probable. Or, as rendered by some other translators,—

The most probable things, sometimes prove false; because, if they were exempt from falsity, they would not be probable, but certain.*

It is likely several things may happen, which are not likely.

The ancient Romans were so sensible of the uncertainty of evidence, and the difficulty of always ascertaining the guilt of the prisoner, that their form of judgment (or verdict of the jury as we should style it), merely expressed, that he appeared to have done it, *fecisse videtur.*

It is not the fact, always, that constitutes the guilt, but the opinion of the judge. "What have the laws ordered in such a case?" was asked of an advocate of Byzantium: "What I please," was the answer.†

The end of a proof, is to establish the matter in debate. In every case, whether by direct proof, or by that of circumstantial evidence, the jury ought always to be fully satisfied of the guilt of the prisoner, before they return such a verdict. It is immaterial what the proof is, if it is not believed, and brings conviction to the mind of the jury.

It has been, of late years, a favorite theme, to descant upon the certainty of circumstantial evidence. The practice of the law, like other things, has its prejudices; and the name of an eminent man, the success of a particular trial, will sometimes give sanction to a false theory.

Circumstances, it is said, cannot lie. This is very true; but witnesses can. And from whom do you obtain circumstances, but from witnesses? Thus, you are liable to two deceptions: first, in the tale told by the witness; and, secondly, in your own application of those circumstances. Where a fact is positively sworn to, as seen by the witness, the conclusion

* Aristotle, Vide Bayle Dict. Agathon.

† Travels of Anacharsis, v. 4. p. 400.

or inference to be drawn from it, is generally obvious. But, where the inference is to be drawn from a long train of circumstances, it is a matter of judgment; it is an exercise of the understanding; and, as all men do not understand alike, very opposite conclusions are sometimes drawn from the same shades of probability.

When the ancient prudence of the law denied to a prisoner the benefit of counsel, on a capital charge, to plead for him, it was understood that the proof should be so clear, as to be self-evident to the jury. It was understood that the judge should be counsel for the prisoner; that is to say, that he should see that the process was fair and regular, and that no undue advantages were taken; but that process is vitiated in its vital part, when a false principle is introduced.

"A presumption, which necessarily arises from circumstances, is very often more convincing, and more satisfactory, than any other kind of evidence; it is not within the reach and compass of human abilities to invent a train of circumstances, which shall be so connected together as to amount to a proof of guilt, without affording opportunities of contradicting a great part, if not all, of these circumstances." (*Charge of Mr. Justice Bullen, on the trial of Captain Donnellan.*)

I deny the position. I maintain, that the theory is repugnant to the received principles of jurisprudence; as known to the best foreign writers on the law of evidence. I maintain, that it is not warranted by experience,—the greatest proof of every rule, the proof of proofs. And I may further assert, that it is new to the practice of the English law.

First, I shall show, that the theory is repugnant to the received principles of jurisprudence, as known to the best foreign writers, on the law of evidence.

The first to whom I shall refer is Mascardus, a writer of great eminence on the general theory of proof; regarding which, he has published four volumes.

"Proof by evidence of the thing, is superior to every other;

and of all different kinds, none is so great as that which is made by witnesses deposing to what they have seen."*

"Proof by presumption and conjectures," he observes in another place, "cannot be called a true and proper proof."†

The work of Menochius is entirely dedicated to the doctrine of presumptions or circumstantial evidence; and although he displays the partiality for this species of proof, which is natural to one who has dedicated his attention to a particular subject, yet, in the very first chapter of his work, he observes, that "the proof or credence which arises from the testimony of witnesses, is superior to any other."‡

I shall not think it necessary to load this Essay with quotations from other writers on the civil law; the above two possess the most eminent authority of any on the subject of evidence. But the same opinion is expressed by every other author, whom I have had occasion to consult: no one has maintained the absurd position, that circumstances cannot lie; or, that conjectural proof is superior to that of ocular demonstration.

Secondly. I maintain, that it is not warranted by experience,—the great test of every rule.

It might appear invidious, to carry reference to cases of modern occurrence, where fatal mistakes have been discovered of persons too hastily convicted on mere circumstantial evidence; the history of the judicial proceedings in this and every other country will afford too many illustrations.

Some cases of this kind will be found well illustrated in Lord Chief Justice Hale's Pleas of the Crown, vol. 2, p. 289.

Various instances occur, of the fatal error being too late

* Probatio per evidentiam rei omnibus est potentior, et inter omnes ejus generis major est illa, quæ fit per testes de visu. (Macardus de Probationibus, v. 1, q. 8, n. 8.

† Probatio per presumtiones et conjectures dici non potest vera et propria probatio.

‡ Probatio seu fides quæ testibus fit, cæteris excellet. (Menochius de Præsumptionibus, l. 1, q. 1.)

discovered; but who can say, how many instances have occurred, where the mistake has never been discovered?

It has often happened, that the real murderer has confessed the fact for which the innocent man has suffered; but, as real murderers do not always confess when innocent men suffer, it is impossible to say to what length this dangerous doctrine may have been carried.

Thirdly. I have further to observe, that this principle is new to the practice of the English law.

That great collection of criminal cases, which bears the name of the State Trials, contains a great fund of criminal knowledge.

The opinions of the judges, however, as expressed in state prosecutions, are not always to be regarded as law, until we reach the period of the revolution.

New enactments of the legislature have changed some part of the law, and the improving experience of time has altered others. The first notice to be found of this principle, in sound and wholesome times, is on the trial of Miss Blandy, for poisoning her father,—before Mr. Baron LEGGE, in 1752.

The judge, in summing up the evidence to the jury, declares that circumstances are more convincing and satisfactory than any other kind of evidence; because "*facts,*" he says, "*cannot lie.*"*

That facts cannot lie, is sound logic, no doubt. Men only lie. But as we only know facts through the medium of witnesses, the truth of the fact depends always upon the truth of the witness; so that, although he furnishes us with a thousand facts, it is of no consequence, if he himself is unsound.

The next occasion on which this doctrine appears, is on the celebrated trial of Captain Donnellan, in 1781, before Mr. Justice BULLER, in the passage already quoted. But he has altered the position a little, by shifting the criterion from facts

* State Trials, v. 10, p. 82.

to circumstances. Facts, before, were the standard of truth; circumstances are now made to be so. For circumstances cannot lie. But what else are circumstances but facts, or *minor* facts; and I must take the liberty to say, that circumstances are still more liable to deceive, or to lead to deception, than even facts. A fact being more an object of sight, is easier apprehended by the senses than a circumstance; which, from its triviality, often escapes the attention altogether, is misapprehended, or assigned to a wrong cause.

The trial in question, will afford a most unparalleled illustration of the truth of this observation; it will show the fallibility of circumstances, and the very opposite conclusions which different men will draw from the same appearances.

I shall here give the general shape of the case—

> If shape it might be called, which shape had none,
> Or substance might be called, which shadow seemed.

Sir Theodosius Boughton, a young man of a delicate constitution, had sent to a country apothecary's shop for a draught of medicine. Different vials appear to have been in his chamber, at the time he took the draught; which was intended to be a composition of rhubarb, jalap, and lavender water.

He was suddenly seized with convulsions in his stomach, and foaming at the mouth; and expired before he could give any explanation. On rinsing one of the vials, the sediment gave the effluvia of laurel water, which is known to be a strong poison. Convulsions, foaming at the mouth, and sudden death, are the natural effects of that liquid.

But every man who dies in that way, is not, therefore, poisoned. The apoplexy will produce the same effects and appearances: of which disease, the father of the young man was known to have died. No evidence whatever was produced as to the existence of the laurel water.

Captain Donnellan, the brother-in-law of Sir Theodosius,

was living in his house at the time of the accident. He was the next heir to the estate, and, accordingly, the person who had the most immediate interest in his death. He certainly betrayed some uneasiness on the event, and appearances indicated that he was afraid of being suspected as the author of the mischief. But, if it was natural that he should be suspected, if the *cui bono* points out the actor of a nefarious deed, it was not unnatural that he should find himself placed in circumstances of peculiar delicacy, and manifest embarrassment and confusion in his conduct.

Captain Donnellan was brought to trial, on a charge of poisoning Sir Theodosius Boughton.

The leading point in every case of this sort, is—did the deceased die of poison? For, if he did not, there is an end of the whole. Where there was no poison, there was no poisoner.

But this was altogether a question to be decided by the opinion of medical men. From what then did they form their opinion? From any of those broad marks, respecting which all men judge alike. No; there was nothing of the kind to guide their judgment. The whole cause turned on circumstances, from first to last. Presumptions were formed on conjectures; and conjectures supposed from circumstances never proved. Four physicians inspected the body, on dissection, the eleventh day after the death. They gave their opinion to the jury, and described the circumstances on which that opinion was founded; those four said, they believed him to have died of poison.

The circumstances on which they had given their opinion, were stated, at the trial, to Doctor John Hunter, the most eminent physician of the age. He declared he could not discover, in any of those circumstances, nor in all of them united, any sign of the deceased having died from poison, nor any symptoms beyond those incident to a man dying suddenly.

Q. from the court to Mr. Hunter. Then, in your judgment, upon the appearance the gentlemen have described, no inference can be drawn from thence that Sir Theodosius

Boughton died of poison?—*A.* Certainly not: it does not give the least suspicion.

In questions of science, and above all, in those of medical science, the faith to be reposed in any opinion, will be regulated by the professional eminence of the person giving it. One man's sight being generally as good as that of another, as to a mere matter of fact; as whether he saw, or did not see such a thing, the learned and the ignorant are upon a par, and one witness to a fact is just as good as another. But the case is very different as to a matter of science; for one man's judgment will outweigh that of many. Upon a point of law or equity, we would not put the opinion of a country attorney, or of four country attorneys, against that of a chief justice, Doctor John Hunter stood, at that time, at the very head of his profession; his opinion gave the law to that profession, both in England and in every country in Europe. Had the profession been to estimate his opinion, and not the jury, a very different verdict would have been given. The case referred peculiarly to to Doctor Hunter's line of study,—that of dissection, and the appearances incident to a body on sudden and convulsive death. He pronounced, that the dissection had been irregularly made, and in a way not to afford the true criterion to judge by. And, where the process is irregular, when the experiment is defective, the conclusion must always be vague and doubtful.

The gentlemen composing the jury did not perhaps know the eminence of Mr. Hunter's character; nor, consequently, the weight due to his opinion. But the judge, on the bench, no doubt knew this; and in balancing the evidence, and in summing up, it was clearly his duty to have stated the great weight to be attached to Mr. Hunter's observations. He stated nothing of all this; but took them numerically, "four medical men to one."

Thus, from an irregular dissection, a positive conclusion was admitted.

It is a rule of law, and above all in cases of life and death,

that the want of any one circumstance will prevent the effect of the whole. Thus, if the dissection were irregular, the opinion formed in reference to that dissection was a mere nothing. As well may you suppose that proposition itself to be true, which you wish to prove, as that other, whereby you hope to prove it.

Post hoc; ergo propter hoc—a species of argument which often leads to fallacy.

Because the fact immediately followed; therefore it was occasioned by that which it followed. He died immediately after taking the medicine; therefore, he was killed by the medicine.

The present question is, was the process on the trial according to law? Was the conclusion arrived at by regular and legal forms? The grounds on which the legal inference is to be drawn, must always of themselves be clear and certain; there is no presumption upon a presumption; there is no inference from a fact not known.

When the judgment of the law is passed in reference to a certain thing, the existence of that thing should be first clearly made to appear.

The fact of poisoning ought to have been established beyond a shadow of doubt, before any person was convicted as the poisoner.

But the jury, it will be said, were satisfied on this point. Had the evidence been duly summed up by the judge; had they been told, as they ought to have been, that in experimental philosophy, such as tracing the effects of a particular poison, in tracing the causes, so many and so complicated that lead to death, if the experiment is defective, if the process is vitiated in one instance, the result is also vitiated and defective. Every practitioner in philosophy is sensible and aware of this truth; and wherever he finds that he has erred in his experiment, he sets the case aside, as affording no satisfactory result, and renews his process in another subject.

But, unfortunately, it is a matter of pride, in some men,

to be always certain in their opinion, and to appear beyond the influence of doubt. Very different was the practice of that modest and eminent man who gave his evidence on this trial: he was accustomed to the fallaciousness of appearances, —to the danger of hasty inferences from imperfect proofs, and refused to give his assent to an opinion, without facts being first produced to support it. "If I knew," said Mr. Hunter, "that the draught was poison, I should say, most probably, that the symptoms arose from that; but when I don't know that that draught was poison, when I consider that a number of other things might occasion his death, I cannot answer positively to it."

During the whole course of this celebrated trial, there was not a single fact established by evidence, except the death, and convulsive appearances at the moment. These appearances, Mr. Hunter declared, offered no suspicion whatever of poison, and were generally incident to sudden death, in what might be called a state of health; not only there was no fact proved, but there was not one single circumstance proved. One circumstance was supposed from another, equally suppositious, and from two fictions united a third was produced. The existence of the laurel water was thus made out: the sediment found in the vial, from which the unfortunate young man had drunk, was supposed to smell like bitter almonds; for, as the smell of laurel water was not then known to Lady Boughton, she could not trace the resemblance further; bitter almonds were supposed to smell like laurel water.

It is here to be observed, that the smell attached to the vial was momentary, for it was washed out almost immediately, and could not be twice experienced. But what so uncertain as the sense of smell? Of all the human senses, it is the most uncertain, the most variable, and fallacious. It is often different to different men, and different in the same person, at one hour, from what it is at the next; a cold, a slight indisposition, the state of the stomach, a sudden exposure to the air, will extenuate or destroy this impression.

But this train of proof was altogether at variance with principles. In law, as already observed, the arguments should be drawn from one reality to another; but here, the argument turned upon the breath, the smell of a woman, distracted at the moment, with the loss of her son, and ready to ascribe that evil to the first thing that came in her way.

All proof must begin at a fixed point. The law never admits of an inference from an inference. Two imperfect things cannot make one perfect. That which is weak, may be made stronger; but that which has no substance, cannot be corroborated. The question is never what a thing is like; but the witness must swear to his belief, as to what it is. A simile is no argument. Upon the principle, that comparison of hands is no evidence, in a criminal trial, comparison of smells must be held to be equally defective. Besides, there are a variety of articles that resemble bitter almonds in the smell, and many of these altogether innoxious.

In circumstantial evidence, the circumstance and the presumption are too often confounded; as they seem to have been throughout this trial. The circumstance is always a fact; the presumption is the inference drawn from that fact. It is hence called presumptive proof; because it proceeds merely on presumption or opinion. But the circumstance itself is never to be presumed, but must be substantively proved. An argument ought to consist in something that is itself admitted; for who can prove one doubtful thing by another. If it was not laurel water, that Sir Theodosius drank, the proof fails as to the effect; and, certainly, some of the usual proofs, some of the common *indicia* or marks of things, should have been established. Where did the prisoner procure it? From whom did he obtain it? Where, and what time,—and by whom, or how did he administer it?* Nothing of this kind was proved.

The whole proof, as to laurel water, rested upon the com-

* Venenum arguis: ubi emi? a quo? quanti? per quem dedi? quo conscio? Quintilian, l. 5, c. 8, s. 37

parison of the smell. Question to Doctor Parsons, "You ground your opinion upon the description of its smell by Lady Boughton?" Answer. "Yes, we can ground our opinion upon nothing else but that, and the subsequent effects."

But the judgment of the cause from its effects, Mr. Hunter has already shown to be equally conjectural as that formed from its resemblance in smell.

The proof proceeds. He was supposed to be poisoned, because it was believed to be laurel water; and it was believed to be laurel water, because he was supposed to be poisoned. We will not say that both these suppositions might not have been true; yet still they were but conjectures, unsupported by any proof, and formed against all the rules of law.

But the accused, it is said, furnished the proof against himself, by his own distrust of his innocence. He no doubt betrayed great apprehensions of being charged with the murder; but are innocent men never afraid of being thought guilty?

We readily recognize all the general truisms, and commonplace observations, as to the confidence of innocence, and the consciousness of guilt; but, we find, from history, that innocence loses its confidence, when oppressed with prejudice; and that men have been convicted of crimes, which they never committed, from the very means which they have taken to clear themselves.

"An uncle who had the bringing up of his niece, to whom he was heir at law, correcting her for some offense, she was heard to say, 'Good uncle, do not kill me;' after which time she could not be found; whereupon the uncle was committed upon suspicion of murder, and admonished, by the justices of the assize, to find out the child by the next assizes; against which time he could not find her, but brought another child, as like her in years and person as he could find, and apparelled her like the true child; but on examination she was found not to be the true child. Upon these presumptions (which were considered to be as strong as facts that appear in the broad face of day), he was found guilty and executed;

but the truth was, the child, being beaten, ran away, and was received by a stranger; and afterwards, when she came of age to have her land, came and demanded it, and was directly proved to be the true child.*

The above case was referred to by Lord MANSFIELD, in his speech in the Douglass cause, as an illustration that forgery, and falsehood itself, has been sometimes used to defend even an innocent cause. "It was no uncommon thing," he observed, "for a man to defend a good cause by foul means, or false pretenses."

Captain Donnellan was liable to suspicion, and to great suspicion, on the general relations of the subject, independent of particular circumstances, and would have been suspected by all the world, had he been never so innocent.

In the first place, it was a well-known fact, that he had been obliged either to quit the army (to which he originally belonged), or had been cashiered by the sentence of a court-martial.

Secondly, he was of all other men the person who was to have gained by the death of Sir. Theodosius Boughton; to whose estate and property he succeeded as his brother-in-law. No other human being had an interest in the case. Such is the disposition in human nature (founded perhaps on a too just knowledge of our feelings and principles of action), that first suspicion always points to the person who is to gain by it, as the author of any mischief of which the real perpetrator is not known. The *cui bono* was not invented by Cassius Severus, to whom it is ascribed,—but every man is alike the *rock of the accused*, in this respect.

If, therefore, it was natural, on general grounds, that Mr. Donnellan should be so suspected, it was also natural for him to be sensible that he would be so, and consequently, to be alarmed, distracted, and uneasy.

But it will be said, that, granting all this, he displayed

* Hale's Pleas of the Crown, v. 2, p. 290.

more uneasiness than was even natural to one in his situation. | It is a delicate thing to answer this question,—it is a nice thing to fix the standard of human feelings,—and to say what degree of perturbation a man, already branded with guilt and conviction, shall feel when placed under circumstances which make him to be suspected of a capital crime.|

Lawyers, and those accustomed to see and advise with persons in that unfortunate predicament, only can tell the terrible apprehensions that every man feels at the idea of being a second time brought to a public trial; it is altogether a new view of human nature, and we seldom estimate, rightly, feelings which we have never experienced, nor expect to experience in our own persons, nor have witnessed in that of other persons;—

> " To thee no reason,—
> " Who good has only known, and evil has not proved."

They who have been accustomed to carry on criminal prosecutions, must be fully aware of the influence which a former trial and conviction is calculated to have on almost any accusation; but in no case can that influence be greater than where the trial turns on presumptive proof. For here it is often the feelings, the prejudices, and opinion of the the jury, that supply the want of evidence.

Suspicion is to be distinguished from proof,—a thousand suspicions do not form one proof. We understand, in common language, by the term suspicion, the imagining of something ill, without proof. It may, therefore, form a proper ground of accusation, but never of conviction: it seems to arise from the general semblance of things, and often from the morals of the individual, rather than from any distinct act. Thus, in the civil law, a guardian is regarded as suspected, whose morals render him so.

A suspicion is one thing, and a necessary inference an-

other: a suspicion is an impression on another man's mind, —an inference is made from the fact itself.

There certainly was no overt act proved against the prisoner during the whole course of this trial; it was not proved that he gave the poison, or saw it given, or had such in his possession. Many things, no doubt, in his demeanor and conversation, gave strong suspicions against him; but, if the civil law positively forbids a man being condemned on suspicion, can that be justified by ours?

"The wisdom and goodness of our law appears in nothing more remarkably, than in the perspicuity, certainty, and clearness of the evidence it requires to fix a crime upon any man, whereby his life, his liberty, or his property can be concerned: herein we glory and pride ourselves, and are justly the envy of all our neighbor nations. Our law, in such cases, requires evidence so clear and convincing, that every bystander, the instant he hears it, must be fully satisfied of the truth and certainty of it. It admits of no surmises, innuendoes, forced consequences, or harsh constructions, nor anything else to be offered as evidence, but what is real and substantial, according to the rules of natural justice and equity."*

We have been the more full in our observations on this trial, because it has been so often quoted with a sort of triumph, as forming a model and illustration of the nature of circumstantial evidence. It is an illustration, indeed, of how little evidence one man has been convicted on; but it is an illustration of nothing else.

We can never bring ourselves to believe, that it is necessary to forfeit the life of a man on bare suspicion, on presumptions without proof, and on inferences unsupported by evidence.

A rule of conduct, to be good, must be so on general grounds, and in reference to the state of society in which we

* Lord Cowper's speech on the Bishop of Rochester's trial.

are placed; and, happily, the wholesome state of British morals does not require that men should be convicted on any evidence but that which is established by law, and warranted by sound reason.

The mischief of a nice conviction does not rest with the particular case; precedents are grounds of law by the English practice, and indeed the most general ground of our law of evidence.

We have, in more than one instance, witnessed the doctrine of circumstantial evidence being hastily applied by loose analogies and incidents, foreign to the intrinsic conditions of the subject. But we do not feel ourselves at liberty to hurt the tenderness due to living reputation, by recurrence to recent instances; we adopt the more agreeable duty of bearing testimony to the wise maxim of an eminent magistrate: "Nothing can be more dangerous or unjust, in matters of this nature," says Mr. Chief Justice HYDE, speaking of homicide, "than to establish material distinctions upon points which do not enter into the intrinsic merits of the case." (*East's Pleas of the Crown*, p. 241.)

The evidence of circumstances on every criminal trial, should be confined as much as possible to the actual commission of the fact.

The intention, indeed, must always precede the act, and is chiefly to be judged of by the antecedent circumstances. But then each of these circumstances should be regarded as a fact to be proved and established by evidence; and, unless so established, ought never to form a ground of conviction. We must once more revert to the trial for illustration. On passing sentence, Mr. Justice BULLER conveyed the following opinion as to the motives:—"Probably the greatness of his fortune caused the greatness of your offense; and I am fully satisfied, on the evidence given against you, that avarice was your motive, and hypocrisy served you with the means."

But where or how was this proved by evidence on the trial? The speech of a judge is to be taken out of the evi-

dence adduced on the trial;—if it is not so limited, it may be difficult to fix its bounds.

In a criminal trial, and more especially in the trial for a capital offense, everything is supposed to be governed by fixed and known rules. There is here no room for the discretion of a judge; the proof by which the prisoner is to be tried is as fixed as the law which condemns the crime; at least, the principles of that proof are to be stated by the judge to the jury, as known and received maxims of reason, handed down by a long train of precedents, or fixed by statutory enactment. "Whatever the rules in Westminister Hall are, it is not therefore reason because it is a rule; but because it is reason, and reason approved of by long experience, therefore it is a rule." (*State Trials*, vol. 4, p. 291.) The opinion of Mr. Justice BULLER might have been very just, but if it was not regularly formed, it was extra-judicial and of dangerous example.

It is an observation warranted by the history of our criminal law, that all the instances by which innocent men have lost their lives, have arisen from precedents against guilty men;* but laws were meant to protect the innocent, as well as to punish the guilty.

The following observation, by Lord BACON, suggests the caution with which men should give their assent to any proposition founded on a mere similarity of circumstances:—"The mind," he observes, "has this property,—that it readily supposes a greater order and conformity in things than it finds; and although many things in nature are singular, and extremely dissimilar, yet the mind is still imagining parallel correspondence and relations betwixt them which have no existence.

"Nor does this folly," he adds, "prevail only in abstract tenets, but also in simple notions." (*Novum organum, s.* 2. *aphorim* 45.)

* Omnia mala exampla, ex bonis initiis orta sun.

Every one may prove the justice of these remarks, by his reflections on what he sees every day occurring in common life.

Weak men are always the first to assent and to admit of loose analogies, imperfect resemblances, and inferences without proof,—whilst men of stronger minds, and more reflection, look out for distinctions; they search for discriminations in subjects nearly similar, and are slow in yielding their assent to first impressions. Judgment consists in distinguishing things which are nearly alike, without exactly being so.

In the general prejudice, which at present prevails for circumstantial evidence, the mind, I am afraid, is rather disposed to look out for analogies and resemblances, than for discrimination.

In almost every trial, it is the interest of the accuser to accumulate his proofs, whilst the safety of the prisoner consists in considering these, separate and apart; this practice, therefore, has a tendency rather to convict than to acquit.

We should lament to advance any thing that might tend to weaken the facility of detecting crimes; but that facility may be increased by establishing certain rules for the determination of proof.

Without presuming to state a body of general rules, we may be allowed to show where some obvious principles have been violated. All instruction proceeds safest by negatives and exclusives to what is positive and affirmative. And it was this principle which led us to dwell so particularly on the above case. We conceive one great error has arisen from the popular saying, that circumstances cannot lie; from the idea that circumstantial evidence is equivalent to direct proof.

And, perhaps, from the vanity of forming resemblances, where (if that passion in the judicial character is ever allowable), the vanity should rather be in perceiving distinctions.

Nothing is more dangerous in the mouth of a judge, than popular brocards, barren generalities, and loose unsettled maxims, which carry away the attention of the jury from the

intrinsic evidence of the case itself, and prevent the free exercise of their own understandings. It is not every jury-man that can understand a general theory, but every man of sense can compare what he hears at the trial, with similar circumstances, as falling under his own experience, and so estimate for himself the credibility of the evidence.

I deprecate an argumentative judge, reasoning a jury into a belief of guilt or innocence, rather than leaving them to judge from their own feelings; from those feelings which God and nature have bestowed on them, as the safeguard of innocence, and the true measure of human conduct.

The following observation, in the charge so often alluded to, deserves particular remark:—"It is not within the reach and compass of human abilities to invent a train of circumstances which shall be so connected together as to amount to a proof, without affording opportunities of contradicting a great part, if not all, of these circumstances."

This is one of those general sayings which, coming from high authority, is allowed to pass without examination, and, from being often repeated, no one thinks to doubt of its truth. No other remark, however, was ever more refuted by experience. If the observation was just, we should find it illustrated by practice; but we know that there are infinitely more instances of mistaken convictions on circumstantial evidence, than by any other species of proof whatever "Reducing general words to particular facts, clears the sophistry of them."*

I beg here to dwell, a little more minutely, on the hardship of requiring a prisoner to controvert a train of circumstantial evidence. For, how can a prisoner, altogether innocent of the charge, controvert circumstances, or an account of events, with which he is unacquainted. A man, charged with the commission of a crime, at a period long an-

* Remarks on College's trial, by Sir J. Hawles. State Trials, vol. 8 p. 621.

terior to the trial, if innocent, and at a distance from the place, at the time of its occurrence, can only establish his innocence by one of two methods:—first, by showing a contradiction in the circumstances of the proof itself; or, secondly, by establishing an *alibi*,—that is, by showing that he was at a different place at the time.* In regard to the first mode of refuting the charge: if he is ignorant of the facts, if he is unaccustomed to the nature of legal argument, he may not easily confute the chain of circumstances. A premeditated story is always so made up as to bear the appearance of consistency. Men will believe a probable falsehood rather than a singular truth; and, in regard to the proof of an *alibi*, if the prisoner does not happen to recollect the day, or cannot, perhaps, recall to mind where he chanced to be on that day, he is left without a defense. The proof of a negative is always difficult, often impossible.

But what is the situation of a person charged with a capital crime? Suspicions of this sort generally fall upon the needy and unfortunate. He is brought from a jail, where he has been perhaps long confined, distracted and agitated with his situation; he has none to assist him or suggest to him what course to pursue; and no counsel is allowed to plead for him, and assert his innocency of the facts charged. A long train of circumstances are offered by the witnesses, of the whole of which he is ignorant, and, therefore, unprepared to ask the necessary questions, or to point out to the jury the incongruity of the story advanced:—his very attempt to do so, unsuccessfully (that is to say, if he makes observations on the evidence, which are not explanatory or correct), will be held an argument of his guilt. But the facts have been sworn to, and his personal appearance is perhaps against him; and his character,—it may be, suffering under prejudice. If a weak magistrate happens to sit on the bench (and weak men

* The character of the witnesses is, no doubt, always a matter of the most important consideration.

sometimes find their way to the bench, as well as to other places); if the judge is infirm, or his attention exhausted by the fatigue of a long trial; and if, in summing up, he loses sight of the chain of incidents, assumes a fact as established before it is so,—endeavors to prove facts by other facts, which are not proved themselves,—forgets the attention which is due to the character of the witnesses, and has allowed the counsel for the prosecution, in his opening speech, to prejudice and inflame the minds of the jury!—

It were superfluous to ask what the result of such a trial must naturally be. We hope, and believe, that such a concurrence of incidents, hostile to justice, is very uncommon.

But to return to the proposition in the charge: can it ever be admitted that the number of circumstances alleged against a prisoner, facilitates the refutation? Surely the difficulty of defense is increased by the multiplicity of proof that it has to contend with! The attention is distracted; and the very embarrassment incident to the occasion, is alone sufficient to bereave any common man of his faculties.

The civil law has foreseen the embarrassments, which a prisoner must always be under, from a variety of witnesses being produced against him; and has, therefore, left it to the discretion of the judge to moderate their number. It might as well be said, that a prisoner has an advantage in the multiplicity of witnesses opposed to him, because if false he can always refute some of them.

But, if you break the chain of circumstances, it will be said, in one link, the whole structure falls to the ground. This, no doubt, ought to be the consequence. But is the fact so? Does experience warrant the observation? Are we to suppose that all those who have been irregularly convicted, made no defense, and broke no part of the chain? They must naturally have offered something to the consideration of the jury. Yet still, we see, that the general effect of the whole, the multiplicity of the circumstances, pointing against

the prisoner, has been thought sufficient to warrant conviction.

It happens, not unfrequently, that a prisoner is not apprized of the evidence intended to be produced against him. If the case is altogether false on the part of the prosecution, the difficulty of defense is increased. For a man can only refute a false story, by being acquainted with some part of it. The true case must always be opposed to the false one. Thus, in the case of two men who were tried some few years ago, for the murder of Mr. Steele, on Hounslow Heath, a long detail of the circumstances attending the occasion, was given in evidence against them. But if they were not, as they asserted, present on the occasion, and knew nothing of either Mr. Steele or the murder, how was it possible for them to refute or disprove the circumstances?

The accusation was not brought until some years after the murder. They could not bring to recollection where they were on that day, and so failed in establishing an alibi.

A different man has been since brought to trial for that very murder. It is true that the judges did not allow the evidence to be entered upon, because they thought that it was insufficient on the statement of the counsel in his opening speech.

It should be always kept in mind, that circumstantial evidence is merely supplemental; and is only resorted to from the want of original and direct proof. And it never can be said that what is secondary, is equal to that which is original, —the thing substituted equal to that which it is meant to supply.

And this distinction seems fully recognized by Lord Chief Baron GILBERT. "When the fact itself cannot be proved, that which comes nearest to the proof of the fact, is the proof of the circumstances that necessarily and usually attend such facts, and called presumptions; and not proof, for they stand instead of the proofs of the fact till the contrary be proved." (*Gilbert's Law of Evidence*, vol. 1, p. 142.)

A regard to the peace and good order of society, certainly requires that crimes shall be liable to be proved by circumstantial evidence. But a regard to the well being of society likewise demands, that the mode of proof should be regulated by some fixed rules. If the nature of the thing admits of but few rules, for that very reason, those few should be the more distinctly observed. This principle is excellently illustrated by the deep Gravina, who somewhere observes (for the book is not at hand for reference), that as the military state admits of but few laws, those few should be the more distinctly observed, as they could only have been introduced into an army or camp from a strong sense of their necessity.

Legal proceedings would be vague and uncertain, judges would become arbitrary, and innocence would be exposed to the resentment of witnesses, if some general and fixed rules were not observed for the discovery of truth.

Of these the following are perhaps the chief:—

1. *The actual commission of the crime itself (the corpus delicti) shall be clearly established.*

2. *Each circumstance shall be distinctly proved.*

3. *The circumstance relied on, shall be such as is necessary or usually incident to the fact charged.*

4. *When the number of circumstances depend on the testimony of one witness, that number shall not increase the strength of the proof.* For, as the whole depends on the veracity of the witness, when that fails the whole fails.

5. *Direct evidence shall not be held refuted from being opposed to circumstances incongruous with that evidence.* Because a certain degree of incongruity is incident to every man's conduct.

6. *The judge, in summing up, shall assume no fact or circumstance as proved; but shall state the whole hypothetically and conditionally; leaving it entirely to the jury, to determine how far the case is made out to their satisfaction.*

7. *The difficulty of proving the negative shall in all cases be allowed due weight.* But the silence of the prisoner as to

facts, which, if innocent, he might have explained, shall be held an argument against him. This, of course, proceeds upon the supposition, that he stood fully apprized, before his trial, of all that was intended to be produced.

8. *The counsel for the prisoner shall be allowed to object freely to the production of any evidence, as not proper to go to the jury, or as not being of legal credence.* On Captain Donnellan's trial, the counsel do not appear to have always availed themselves of this privilege.

The liberty of objecting to any piece of evidence, ought, on every occasion, to be strenuously exerted; as supplying, in a great measure, the right of making the defense.

9. *The jury shall be as fully convinced of the guilt of the prisoner, from the combination of the circumstances, as if direct proof had been brought.*

It should always be considered, whether the connection betwixt the circumstances and the crime is necessary, or only casual and contingent; and whether, therefore, the circumstances necessarily involve the guilt of the prisoner, or only probably so; whether these circumstances might not all exist, and yet the accused be innocent.

It seems desirable, that some inchoate act, approaching to the crime, should be proved on the prisoner; and that he should not be convicted on general appearances,—such as from being found in a certain situation. The improper conviction seem chiefly to have been owing to a neglect of this rule. Strong appearances, but without any act proved against the prisoner, have too often turned out unfounded.

It is sometimes said, in summing up by the judge, that the evidence is the best that the nature of the case can be supposed to afford; but this, certainly, is no reason for the jury being satisfied with it. In the first place, the nature of the case is only to be known by the evidence. The case of an innocent man must always be of a nature to afford very little evidence; but the jury, let the case be what it will, must be distinctly persuaded of the guilt of the prisoner, before they

return such a verdict. Agreeably to the common law, where the facts have gone regularly before a jury, and there is no misdirection from the judge in summing up, the proof is complete. When the jury is satisfied, the law is satisfied. No principle can be at once more calculated to facilitate the detection of crimes, to ensure the safety of innocence, and to maintain the general peace of society.

10. *Where the body of the act is distinctly sworn to, a variation in the circumstances does not destroy the proof.* "If several independent witnesses, of fair character, should agree in all the parts of a story (in testifying, for instance, that a murder or a robbery was committed at a particular time, in a particular place, and by a certain individual), every court of justice in the world would admit the fact, notwithstanding the abstract possibility of the whole being false. Again, if several honest men should agree in saying that they saw the king of France beheaded, though they should disagree as to the figure of the guillotine, or the size of his executioner, as to the king's head being bound or loose, as to his being composed or agitated in ascending the scaffold, yet every court of justice in the world would think that such difference, respecting the circumstances of the fact, did not invalidate the evidence respecting the fact itself.

"When you speak of the whole of a story, you cannot mean every particular circumstance connected with the history, but not essential to it; you must mean the pith and marrow of a story; for it would be impossible to establish the truth of any fact (of Admirals Byng or Keppel, for example, having neglected or not neglected their duty), if a disagreement in the evidence of witnesses, in minute points, should be considered as annihilating the weight of the evidence in points of importance. In a word, the relation of a fact differs essentially from the demonstration of a theorem; if one step is left out, one link in the chain of ideas constituting a demonstration is omitted, the conclusion will be destroyed; but a fact may be established notwithstanding a disagreement of wit-

nesses in certain trifling particulars of their evidence respecting it."*

The following rule is the converse of the preceding one:

11. *Where the leading fact or crime is only to be collected from circumstances, a material variation in these will defeat the effect of the whole.*

For, as each particular is to have an effect on the general conclusion, a variation in the circumstances may give a different color to the whole transaction.

A system of propositions is only true, because each of the propositions, of which it is composed, is true.

12. *There being no repugnance in the chain of circumstances, is a proof that a thing may be; not that it is: though there being a repugnance, is a proof that it cannot be.* Whatever does not involve a contradiction, is possible; whatever involves one, is impossible.

13. *The absence of the proof, naturally to be expected, is a strong argument against the existence of any fact alleged.* This applies particularly to cases where violence is charged.

"It is an undoubted truth" (Lord MANSFIELD observed in the Douglass cause), "that judges, in forming their opinion of events, and in deciding upon the truth or falsehood of controverted facts, must be guided by the rules of probability; and, as mathematical or absolute certainty is seldom to be attained in human affairs, reason and public utility require that judges, and all mankind, in forming their opinion of the truth of facts, should be regulated by the superior number of the probabilities on the one side or the other,

* Apology for the Bible, p. 344.

We shall search in vain our State Trials, for a happier illustration of the principle than the above, from the elegant pen of Doctor Watson. "Literary men," it has been observed, "have marked superiority over lawyears, whenever they assume their profession."

Quæ argumenta ad quem modum probandæ cuique rei sufficiant, nullo certo modo satis definiri potest.

Ex sententia animi tui te æstimare oportet, quid aut credas, aut parum probatum tibi opinaris (ff. lib. 22, tit. 5, s. 3).

whether the amount of these probabilities be expressed in words and arguments, or by figures and numbers."

Applied to the affairs of civil life in reference to which the observation was made, the proposition is excellent; but the rule does not hold in criminal cases. The impression on the mind of the jury, in a criminal case, must be, not that the prisoner is probably guilty, but that he really and absolutely is so;—where they doubt, they are to acquit.

It is often said, in respect to evidence of this sort, if you break the chain of circumstances, the whole falls to the ground. It is material, always, to be apprised of the meaning of terms, before we argue as to their effect. What is the import of the term? In what does this interruption consist? The Douglass cause turned entirely on circumstantial evidence; yet neither the speeches of the judges, nor the singularly acute letters of Mr. Stewart, on the subject of the trial, afford any solution of the term. The chain appears, on both sides of the question, repeatedly broken, and as often renewed; the want of the fact is supplied by argument, and the argument invalidated by the want of the fact, in endless prolixity.

We hazard an explanation of it with great diffidence:—the chain of circumstances is broken, whenever there is such a defect in the thread of the narrative as cannot be accounted for; or, such a contradiction in the statement, as is irreconcilable with probability.

We will not add to the number of the above rules, lest we might appear to aim at forming a technical system for the belief or disbelief of facts, independent of the free exercise of the understanding over the circumstances of the case.

We must never bind ourselves down to believe or disbelieve, on general grounds, abstracted from the condition of times, persons, motives, and all the variety of relations of which the particular case happens to consist. Irregular, capricious, and shifting as man is, in all his actions, we can never establish absolute grounds for judging of these.

FAMOUS CASES

OF

CIRCUMSTANTIAL EVIDENCE.

I.

The Old Woman of the Place St. Michel.

THERE lived in Paris, more than a century ago, an old dame who kept a shop in a house not far distant from the Place St. Michel. She was reputed rich, and was supposed to keep her money in the house. Her only servant was a boy who had lived with her for several years; he slept in the house, but high up in the fourth story, or rather loft, which could only be reached by a staircase, such as was common in those days, outside the house wall, the old lady sleeping in a room on the ground floor at the back of the shop. It was the boy's duty to lock the shop door at night and retain possession of the key. One morning the neighbors found the shop door open much earlier than usual, and as there was no one to be seen in the shop, some of them, suspecting that all was not right, went in. There were no marks betokening a violent entry of the premises, but the old lady was discovered dead

in her bed, having received many wounds, such wounds, to all appearance, having been inflicted with a knife; and a knife covered with blood was found lying in the middle of the shop floor. One hand of the corpse yet grasped a thick lock of hair, and in the other was a neck-handkerchief. It was proved beyond doubt that the knife and the neck-handkerchief belonged to the boy who had been so long her servant, and the lock of hair also matched his exactly. He was arrested, charged with the crime, and (probably under torture) confessed it, and suffered capital punishment as a murderer. He was innocent, notwithstanding. Not very long after his execution another boy, a servant in a neighboring wine-shop, being taken into custody for another offense, and seized with the pangs of remorse, confessed to the murder of the old dame. He had long been familiarly acquainted with the shop boy, who had suffered innocently, and had been in the habit of dressing his hair. He had managed by degrees to save up enough of the lad's hair from the comb he made use of to make into a tolerably stout lock, and this he had put into the hand of the dead woman. He had stolen one of the boy's neck-handkerchiefs, and also his knife, and by taking an impression in wax of the key, had been able to construct another by which to gain entrance

to the shop. At the first glance, the evidence in this case seems at once clear, natural and spontaneous; but the very completeness of the evidentiary facts ought to have aroused suspicion; and there is no doubt that had a rigid investigation been set on foot, the innocence of the accused would have been established.

II.

Case of John Jennings.

A CASE of fabricated evidence of a sufficiently remarkable kind occurred near Hull, in the year 1742. A gentleman traveling to that place was stopped late in the evening, about seven miles from the town, by a masked highwayman, who robbed him of a purse containing twenty guineas. The highwayman galloped off by a side road, and the traveler, in no way injured, save in purse, continued his journey. It was now growing late, and, being excited and alarmed by what had happened, he naturally looked out for a place of shelter, and, instead of riding on to Hull, stopped at the first inn he came to, which was the "Bell Inn," kept by Mr. James Brunell. He went into the kitchen to give directions for his supper, and there he related to several persons the fact of his having been robbed, to which he added the further information, that when he traveled he always gave his gold a peculiar mark, and that every guinea in the purse taken from him

was thus marked. He hoped, therefore, that the robber would yet be detected. Supper being ready, he withdrew. The gentleman had not long finished his supper, when Mr. Brunell came into the parlor where he was, and, after the usual inquiries of landlords as to the desires of the guest, observed, "Sir, I understand you have been robbed in this neighborhood this evening?" "Yes," said the traveler, "I have." "And your money was marked?" continued the landlord. "It was so," was the reply. "A circumstance has arisen," resumed Mr. Brunell, "which leads me to think I can point out the robber. Pray, at what time in the evening were you stopped." "It was just setting in to be dark," replied the traveler. "The time confirms my suspicions," said the landlord; and he then informed the gentleman that he had a waiter, one John Jennings, who had of late been so very full of money, and so very extravagant, that he (the landlord) had been surprised at it, and had determined to part with him, his conduct being every way suspicious; that long before dark that day, he had sent out Jennings to change a guinea for him; that the man had only come back since the arrival of the traveler, saying he could not get change; and that, seeing Jennings to be in liquor, he had sent him off to bed, deter-

mined to discharge him in the morning. Mr. Brunell continued to say, that when the guinea was brought back to him, it struck him that it was not the same he had sent out for change, there being on the returned one a mark which he was very sure was not upon the other; but he should probably have thought no more of the matter, Jennings having frequently had gold in his pocket of late, had not the people in the kitchen told him what the traveler had related respecting the robbery, and the circumstance of the guineas being marked. He (Mr. Brunell) had not been present when this relation was made, and, unluckily, before he heard of it from the people in the kitchen, he had paid away the guinea to a man who lived at some distance, and who had now gone home. "The circumstance, however," said the landlord, in conclusion, "struck me so very strongly, that I could not refrain, as an honest man, from coming and giving you information of it."

Mr. Brunell was duly thanked for his disclosure. There appeared from it the strongest reasons for suspecting Jennings; and if, on searching him, any others of the marked guineas should be found, and the gentleman could identify them, there would then remain no doubt in the matter. It was now agreed to go up to his room. Jennings was fast asleep; his

pockets were searched, and from one of them was drawn forth a purse containing exactly nineteen guineas. Suspicion now became certainty; for the traveler declared the purse and guineas to be identically those of which he had been robbed. Assistance was called; Jennings was awakened, dragged out of bed, and charged with the robbery. He denied it firmly; but the circumstances against him were too strong, and he was not believed. He was secured that night, and next day was taken before a justice of the peace. The gentleman and Mr. Brunell deposed to the facts upon oath; and Jennings, having no proofs, nothing but mere assertions of innocence, which could not be credited, was committed to take his trial at the next assizes.

So strong seemed the case against him, that most of the man's friends advised him to plead guilty, and throw himself on the mercy of the court. This advice he rejected, and when arraigned, pleaded not guilty. The prosecutor swore to the fact of the robbery; though, as it took place in the dusk, and the highwayman wore a mask, he could not swear to the person of the prisoner, but thought him of the same stature nearly as the man who robbed him. To the purse and guineas, when they were produced in court, he swore—as to the purse, positively, and as

to the marked guineas, to the best of his belief; and he testified to their having been taken from the pocket of the prisoner.

The prisoner's master, Mr. Brunell, deposed as to the sending of Jennings for the change of a guinea, and to the waiter's having brought him back a marked one instead of the one he had given him unmarked. He also gave evidence as to the discovery of the purse and guineas on the prisoner. To consummate the proof, the man to whom Mr. Brunell had paid the guinea, as mentioned, came forward and produced the coin, testifying at the same time, that he had received it on the evening of the robbery, from the prisoner's master, in payment of a debt; and the prosecutor, on comparing it with the other nineteen, swore to its being, to the best of his belief, one of the twenty marked coins taken from him by the highwayman, and of which the other nineteen were found on Jennings.

The judge summed up the evidence, pointing out all the concurring circumstances against the prisoner; and the jury, convinced by this strong accumulation of testimony, without going out of court, brought in a verdict of guilty. Jennings was executed some time afterwards, at Hull, repeatedly declaring his innocence up to the moment of his execution.

Within a twelvemonth afterwards, Brunell, the master of Jennings, was himself taken up for a robbery committed on a guest in his house, and the fact being proved on trial, he was convicted and ordered for execution. The approach of death brought on repentance and confession. Brunell not only acknowledged he had been guilty of many highway robberies, but owned that he had committed the very one for which Jennings suffered. The account which he gave was, that after robbing the traveler, he had reached home before him by swifter riding, and by a nearer way. That he found a man at home waiting for him, to whom he owed a little bill, and to whom, not having enough of other money in his pocket, he gave away one of the guineas which he had just obtained by robbery. Presently came in the robbed gentleman, who, whilst Brunell, not knowing of his arrival, was in the stable, told his tale, as before related, in the kitchen. The gentleman had scarcely left the kitchen before Brunell entered it, and there, to his consternation, heard of the facts, and of the guineas being marked. He became dreadfully alarmed. The guinea which he had paid away he dared not ask back again; and as the affair of the robbery, as well as the circumstance of the marked guineas, would soon become

publicly known, he saw nothing before him but detection, disgrace, and death. In this dilemma, the thought of accusing and sacrificing poor Jennings occurred to him. The state of intoxication in which Jennings was, gave him an opportunity of concealing the purse of money in the waiter's pocket. The rest the reader knows.

III.

Case of James Harris.

JAMES HARRIS kept a public house within eighteen miles of York, having in his service a man named Morgan, who, to his other occupations, added that of gardener. It happened that one Grey, a blacksmith, journeying on foot to Edinburgh, supped and slept at this public house. Next morning Morgan deposed before a magistrate, that his master strangled Grey in his bed—that he actually saw him commit the murder—that he in vain endeavored to prevent it, his master insisting that the man was in a fit, and that he was merely endeavoring to assist him. Morgan further swore, that, affecting to believe this, he left the room; but after retiring, looked through the keyhole, and saw the murderer rifling the pockets of the deceased. Harris, as well he might, vehemently denied the accusation, and, haplessly for himself, threatened a prosecution for perjury. As no mark of violence was visible on the body, Harris was on the point of being discharged, when the maid-servant demanded to be heard. She swore that from a wash house window, as she was descending the stairs, she

saw her master take some gold from his pocket, and having carefully wrapped it up, bury it under a tree in the garden, the position of which she indicated. Upon this, Harris turned pale, and the earth under the tree having been searched by a constable, thirty pounds in gold was found wrapped up in a paper. Harris then admitted that he had buried the money for security's sake, but answered in so confused and hesitating manner, that he was committed. He was tried at York for the murder. The man, the maid, the constable, and the magistrate, were all examined, and no suspicion attaching to their testimony, a verdict of guilty was at once pronounced. He died protesting his innocence, and ere long his innocence became manifest to all men. The real facts were as follows. In a quarrel between Harris and his servant, Morgan received a blow, and vowed revenge. Soon afterwards, Grey's arrival furnished the opportunity. The part which the servant maid played in the business is explained by the fact that she and the gardener were sweethearts. Seeing her master one day apparently hiding something under a tree, she apprised Morgan, who, on digging, found five guineas concealed there. On this, they agreed to purloin the hoard, when it should amount to a sum sufficient to enable them to set up in business. But

Harris's threat of a prosecution for perjury so terrified the girl, that she resolved to save her lover by the sacrifice both of the money and of her master's life. A subsequent quarrel, the not unusual consequence of guilt like theirs, betrayed the truth. They died of jail fever, on the day previous to that appointed for their trial. It was afterwards ascertained that Grey had had two apoplectic fits, and had never been in possession of five pounds at a time in his life.

In this melancholy case, it will be observed that the victim of circumstantial evidence himself unconsciously prepared the principal fact which told against him.

IV.

Case of Soren Qvist.

THE most striking case of circumstantial evidence, in which the testimony against the accused was altogether fabricated by the accuser, is one taken from the Danish records, and which, from its impressiveness, has been made the subject of remark by both Danish and German writers. The unhappy fate of the clergyman, Sören Qvist, is familiar to his countrymen, though many generations have passed away since the events which are about to be related.

Sören was the pastor of the little village of Veilby, situated a few miles from Grenaee, in the Jutland peninsula. He was a man of excellent moral character, generous, hospitable, and diligent in the performance of his sacred duties; but he was also a man of constitutionally violent temper, which he lacked the ability to restrain, and was consequently subject at times to fierce outbreaks of wrath, which were a scourge to his household when they occurred, and a humiliation to himself. Like most Danish clergymen of that day, he was

a tiller of the soil, as well as a preacher of the word; and from the produce of his tithes, and the cultivation of his farm, realized a comfortable competence. He was a widower with two children—a daughter who kept house for him, and a son holding an officer's commission in the army. At Ingvorstrup, a village not far from Veilby, dwelt a cattle-farmer, one Morten Burns, who, by means anything but honest and honorable, had acquired considerable property, and who was in ill repute as a reckless self-seeker, and oppressor of the poor. This man Morten thought fit to pay court to the pastor's daughter, but his suit was rejected by both parent and child; and either the refusal, or the manner of it, so irritated the suitor that he swore secretly to be revenged on both.

Some months later, when the short-lived suit had been forgotten, the pastor, being in want of a farm servant, engaged Niels Burns, a poor brother of the rich Morten, the discarded lover. Niels soon showed himself to be an utterly worthless fellow, lazy, impudent, and overbearing; and the result was a constant recurrence of quarrels and mutual recriminations between him and his master Sören on more than one occasion gave the fellow a thrashing, which did not at all tend to improve the relations between

them. These relations, however, were destined to come to a speedy close. The pastor had set Niels to dig a piece of ground in the garden, but on coming out he found him not digging, but leisurely resting on his spade and cracking nuts which he had plucked, his work being left undone. The pastor scolded him angrily; the man retorted that it was no business of his to dig in the garden; at which Sören struck him twice in the face, and the fellow, throwing down the spade, retaliated with a volley of abuse. Thereupon the old man lost all self-control, and seizing the spade, he dealt the fellow several blows with it. Niels fell to the earth like one dead; but when his master in great alarm raised him up he broke away, leaped through the hedge, and made off into the neighboring wood. From that time he was seen no more, and all inquiries after him proved vain. The above was the pastor's account of the facts.

Ere long strange rumors began to circulate in the neighborhood, and, as a matter of course, they reached the pastor's ears. Morten Burns was known to have said that "he would make the parson produce his brother even if he had to dig him out of the earth." Sören was intensely pained at the calumny implied, and instituted at his own expense

a quiet search after the missing man—a search which failed altogether. Even before that failure was known, Morten Burns, in fulfillment of his threat, applied to the district magistrate, taking with him as witnesses one Larsen, a cottager, and a laborer's widow and daughter, on the strength of whose testimony he declared his suspicion that the pastor had slain his brother. The magistrate represented to him the risk he ran in making so serious a charge against the clergyman, and advised him to weigh the matter well before it was too late. But Morten persisted in his design, and the statements of the witnesses were taken down. The widow Karsten deposed, that on the very day when Niels Bruns was said to have fled from the parsonage, she and her daughter Else had passed by the pastor's garden about the hour of noon. When they were nearly in front of the hedge which encloses it on the eastern side, they heard some one calling Else. It was Niels, who was on the other side of the hazel bushes, and who now bent back the branches, and asked Else if she would have some nuts. She took a handful, and then asked him what he was doing there? He answered, that the pastor had ordered him to dig, but that the job did not suit him, and he preferred cracking nuts. Just then they heard a

door in the house open, and Niels said, "Now, listen, and you shall hear a preachment." Directly after they heard (they could not see, because the hedge was too high and too thick) how the two quarreled, and how the one paid the other in kind. At last they heard the pastor cry, "I will beat thee, dog, until thou liest dead at my feet!" Whereupon there were sounds as of blows, and then they heard Niels calling the pastor a rogue and a hangman. To this the pastor made no reply; but they heard two blows, and they saw the iron blade of a spade and part of the handle swing twice above the hedgerow, but in whose hands they could not discern. After this all was quiet in the garden, and, somewhat alarmed and excited, the widow and her daughter hurried on their way.

Larsen disposed that on the evening of the day following that of the disappearance of Niels, as he was returning home very late from Tolstrup, and was passing along the footpath which flanks the southern side of the pastor's garden, he heard from within the garden the sound of some one digging the earth. At first he was rather startled; but seeing that it was clear moonlight, he determined to find out who it was that was working in the garden at that late hour; whereupon he slipped off his

wooden shoes, climbed up the hedge, and parted the tops of the hazel bushes so as to enable himself to see. Then he saw the pastor in the green dressing-gown he usually wore, and with a white night-cap on his head, busied in leveling the earth with a spade; but more than this he did not see, for the pastor turned suddenly round as if some sound had struck his ear, and witness being afraid of detection, let himself down, and ran away.

When the witnesses had thus disposed, Morten demanded that the parson should be arrested. Wishing to avoid such a scandal if possible, the magistrate, who was a friend of Sören's, proposed that they should go together to the parsonage, where they would probably receive a satisfactory explanation of the facts deposed to. Morten consented to this, and the party set out. On approaching the house they saw Sören coming to meet them —when Morten ran forward, and bluntly accused him of murdering his brother, adding that he was come with the magistrate to make search for the body. The pastor made him no reply, but courteously greeting the magistrate, gave directions to the farm servants, who now gathered round, to aid by all the means in their power the search about to be made. Morten led the way into the garden,

and after looking round for some time, pointed to a certain spot and called upon the men to dig there. The men fell to work, and Morten joined them, working with a show of frantic eagerness. When they had dug to a little depth the ground proved so hard that it was evident it had not been broken up for a long while. Sören had looked on quite at ease, and now he said to Morten, "Slanderer, what have you got for your pains?" Instead of replying, Morten turned to Larsen, and asked him where it was that he had seen the parson digging. Larsen pointed to a heap of cabbage stalks, dried haulms, and other refuse, and said he thought that was the place. The rubbish was soon removed, and the men began digging at the soil beneath. They had not dug long, when one of them cried out, "Heaven preserve us!" and as all present crowded to look, the crown of a hat was visible above the earth. "That is Niel's hat!" cried Morten, "I know it well—here is a security we shall find him! Dig away!" he shouted with fierce energy, and was almost as eagerly obeyed. Soon an arm appeared, and in a few minutes the entire corpse was disinterred. There could be no doubt that it was the missing man. The face could not be recognized, for decomposition had commenced, and

the features had been injured by blows; but all his clothes, even unto his shirt with his name on it, were identified by his fellow servants; even a leaden ring in the left ear of the corpse was recognized as one which Niels had worn for years.

There was no alternative but to arrest the pastor on the spot—indeed, he willingly surrendered himself, merely protesting his innocence. "Appearances are against me," he said; "surely this must be the work of Satan and his ministry; but He still lives who will at his pleasure make my innocence manifest. Take me to prison; in solitude and in chains I will await what He in his wisdom shall decree."

The pastor was removed to the goal at Grenaee the same night, and on the following day came the judicial examination. The first three witnesses confirmed their former statements on oath. Moreover, there now appeared three additional witnesses, viz: the pastor's two farm servants and the dairymaid. The two former explained how on the day of the murder they had been sitting near the open window in the servant's room, and had heard distinctly how the pastor and the man Neils were quarreling, and how the former had cried out, "I will slay thee, dog! thou shalt lie dead at my feet!" They added that they had twice before heard the pastor

threaten Niels with the like. The dairymaid deposed that on the night when Larsen saw the pastor in the garden, she was lying awake in bed, and heard the door leading from the passage into the garden creak; and that when she rose and peeped out, she saw the pastor, in his dressing-gown and night-cap, go out into the garden. What he did there she saw not; but about an hour afterwards she again heard the creaking of the door.

When asked what he had to say in his defense, the pastor replied solemnly, "So help me God, I will say nothing but the truth. I struck deceased with the spade, but not otherwise than that he was able to run away from me, and out of the garden; what became of him afterwards, or how he came to be buried in my garden, I know not. As for the evidence of Larsen and the dairymaid, who say that they saw me in the garden in the night, it is either a foul lie or it is a hellish delusion. Miserable man that I am! I have no one on earth to speak in my defense—that I see clearly; if He in heaven likewise remains silent, I have only to submit to His inscrutable will."

When, some weeks later, the trial came on, two more fresh witnesses were produced. They declared that on the oft-mentioned night they were pro-

ceeding along the road which runs from the pastor's garden to the wood, when they met a man carrying a sack on his back, who passed them and walked on in the direction of the garden. His face they could not see, inasmuch as it was concealed by the overhanging sack; but as the moon was shining on his back, they could plainly descry that he was clad in a pale green coat and a white night-cap. He disappeared near the pastor's garden hedge. No sooner did the pastor hear the evidence of the witness to this effect than his face turned an ashy hue, and he cried out in a faltering voice, "I am fainting!" and was so prostrated in body that he had to be taken back to prison. There, after a period of severe suffering, to the intense astonishment of every one, he made, to his friend, the district magistrate who had first arrested him, the following strange confession:—"From my childhood, as far back as I can remember, I have ever been passionate, quarrelsome, and proud—impatient of contradiction, and ever ready with a blow. Yet have I seldom let the sun go down on my wrath, nor have I borne ill-will to any one. When but a lad I slew in anger a dog which one day ate my dinner, which I had left in his way. When, as a student, I went on foreign travel, I entered, on slight provoca-

tion, into a broil with a German youth in Leipsic, challenged him, and gave him a wound that endangered his life. For that deed, I feel it, I merited that which has now come upon me after long years; but the punishment falls upon my sinful head with tenfold weight now that I am broken down with age, a clergyman, and a father. Oh, Father in heaven! it is here that the wound is sorest."

After a pause of anguish, he continued: "I will now confess the crime which no doubt I have committed, but of which I am, nevertheless, not fully conscious. That I struck the unhappy man with the spade I know full well, and have already confessed; whether it were with the flat side or with the sharp edge I could not in my passion discern; that he then fell down, and afterwards again rose up and ran away—that is all that I know to a surety. What follows—heaven help me!—four witnesses have seen; namely, that I fetched the corpse from the wood and buried it; and that this must be substantially true I am obliged to believe, and I will tell you wherefore. Three or four times in my life, that I know of, it has happened to me to walk in my sleep. The last time (about nine years ago), I was next day to preach a funeral sermon over the remains of a man who had unexpectedly

met with a dreadful death. I was at a loss for a text, when the words of a wise man among the ancient Greeks suddenly occurred to me, 'Call no man happy until he be in his grave.' To use the words of a heathen for the text of a Christian discourse, was not, methought, seemly; but I then remembered that the same thought, expressed in well-nigh the same terms, was to be met with somewhere in the Apocrypha. I sought, and sought, but could not find the passage. It was late, I was wearied by much previous labor; I therefore went to bed, and soon fell asleep. Greatly did I marvel the next morning when, on arising and seating myself at my writing desk, I saw before me, written in large letters in a piece of paper, 'Let no man be deemed happy before his end cometh (Syrach xi. 34).' But not this alone; I found likewise a funeral discourse—short, but as well written as any I had ever composed—and all in my own handwriting. In the chamber none other than I could have been. I knew, therefore, who it was that had written the discourse; and that it was no other than myself. Not more than half a year previous, I had, in the same marvelous state, gone in the night time into the church, and fetched away a handkerchief which I had left in the chair behind the altar. Mark now—

when the two witnesses this morning delivered their evidence before the court, then my previous sleep-walkings suddenly flashed across me; and I likewise called to mind that in the morning after the night during which the corpse must have been buried, I had been surprised to see my dressing-gown lying on the floor just inside the door, whereas it was always my custom to hang it on a chair by my bedside. The unhappy victim of my unbridled passion must, in all likelihood, have fallen down dead in the wood; and I must in my sleep-walking have followed him thither. Yes—the Lord have mercy!—so it was, so it must have been."

On the following day sentence of death was passed upon the prisoner—a sentence which many felt to be too severe, and which led to a friendly conspiracy on his behalf; and had it not been for his own refusal to be a party to anything unlawful, he might have escaped. The jailer was gained over, and a fisherman had his boat in readiness for a flight to the Swedish coast, where he would have been beyond the reach of danger. But Sören Qvist refused to flee. He longed, he said, for death; and he would not add a new stain to his reputation by a furtive flight. He maintained his strength of mind to the last, and from the scaffold he addressed to the by-

standers a discourse of much power, which he had composed in prison during his last days. It treated of anger and its direful consequences, with touching allusions to himself and the dreadful crime to which his anger misled him. Thereafter, he doffed his coat, bound with his own hands the napkin before his eyes, and submitted his neck to the executioner's sword.

One-and-twenty years after the pastor, Sören Qvist of Veilby, had been accused, tried, condemned, and executed for the murder of his serving-man, an old beggarman applied for alms to the people of Aalsöe, the parish adjoining to Veilby. Suspicions were aroused by the exact likeness the beggarman bore to Morten Bruns, of Ingvorstrup, who had lately died, and also by the curious and anxious inquiries the man made concerning events long past. The pastor of Aalsöe, who had buried Morten Bruns, took the vagabond to his parsonage, and there the fellow, all unconscious of the portentous nature of the admission, acknowledged that he was Niels Bruns, the very man for whose supposed murder the pastor had suffered the shameful death of a criminal. Had his brother Morten survived him, it is pretty certain the truth, concealed so long, had never been known, as Niels had only returned to the dis-

trict in the hope of profiting by Morten's death, the news of which had accidentally reached him. He professed—and, indeed, plainly experienced—the utmost horror on hearing the dreadful history of the pastor's cruel fate. It was all Morten's doing, he said; but he was so overcome by the terrible narrative that he could scarcely gather strength to reply to the questions put to him. The result of his examination and confession may be summed up very briefly. Morten had conceived a mortal hatred of Sören Qvist from the time that he refused him his daughter, and had determined on revenge. It was he who compelled Niels to take service with the pastor; he had spurred him on to the repeated offenses, in the expectation that violence would result, owing to the pastor's hasty temper; and had carefully nursed the feud which soon arose between master and man. Niels told him daily all that took place. On leaving the garden on that fatal day, he had run over to Ingvorstrup to acquaint his brother with what had happened. Morten shut him up in a private room that no one might see him. Shortly after midnight, when the whole village was asleep, the two brothers went to a place where the roads cross each other, and where two days previously a suicide had been buried—a young man of about

Niels' age and stature. In spite of Niels' reluctance and remonstrance they dug up the corpse and took it into Morten's house. Niels was made to strip and don a suit of Morten's, and the corpse was clad, piece by piece, in Niels' cast-off clothes, even to the very ear-ring. Then Morten battered the dead face with a spade, and hid it in a sack until the next night, when they carried it into the wood by Veilby parsonage. Niels asked what all these preparations meant. Morten told him to mind his own business, and to go and fetch the parson's green dressing-gown and cap. This Niels refused to do, whereupon Morten went and fetched them himself.* "And now," he said to his brother, "you go your way. Here is a purse with a hundred dollars—make for the frontier, where no one knows thee; pass thyself under another name, and never set thy foot on Danish soil again as thou wouldst answer it with thy life!" Niels did as he was commanded, and parted from Morten forever. He had enlisted for a soldier, had suffered great hardships, had lost a limb, and had returned to his native place a mere wreck.

* It was not the custom in Jutland, in those days—it is hardly the custom now—to lock up the house at night.

V.

Case of Thomas Geddely.

THOMAS GEDDELY was a waiter in a public house kept by a Mrs. Williams at York, and much frequented. The landlady was a bustling woman, a favorite with her customers, and had the reputation of being well-to-do. One morning it was found that her scrutoire had been broken open and rifled of a considerable sum; and as on that same morning Thomas Geddely did not make his appearance, everybody concluded that he was the robber. A year afterwards, or thereabouts, a man came to York who, under the name of James Crow, plied for employment as a porter, and thus picked up a scanty living for a few days. Meanwhile, from his unlucky likeness to Geddely he began to be mistaken for the thief. Many people addressed him as Tom Geddely, and when he declared that he did not know them, that his name was James Crow, and that he had never lived in York before, they would not believe him, and attributed his denial to his natural desire to escape the consequences of the robbery he had committed at the public house.

When subsequently his mistress was sent for, she singled him out from a number of people, and calling him Geddely, upbraided him with his ingratitude, and charged him with robbing her. When dragged before the justice of the peace, and examined in his presence, the man affirmed, as stoutly as any man could, that his name was not Geddely, that he had never known any person of that name, that he had never in his life lived in York before, and that his name was James Crow. He could not, however, get any one else to substantiate his affirmations; he could give but a poor account of himself, but was forced to admit that he led a vagabond life—and as the landlady and others swore positively to his person, he was committed to jail at York Castle to await his trial at the next assizes. When, in due time, the trial came on, he pleaded "not guilty," and denied as before that he was the person he was taken for; but the landlady of the inn and several other witnesses swore positively that he was the identical Thomas Geddely who was waiter when she was robbed; while a servant girl deposed that she had seen him on the very morning of the robbery in the room where the scrutoire was broken open, with a poker in his hand. As the prisoner had nothing to urge against the evidence but a simple denial, and as he

could not prove an *alibi*, he was found guilty of the robbery, was condemned to death, and executed. He persisted to his latest breath in affirming that he was not Thomas Geddely, and that his name was Crow.

The truth of the poor fellow's declaration was established all too late. Not long after Crow's unjust punishment, the real Thomas Geddely, who, after the robbery, had fled from York to Ireland, was taken up in Dublin for a crime of the same stamp, and there condemned and executed. Between his conviction and execution, and again at the fatal tree, he confessed himself to be the very Thomas Geddely who had committed the robbery at York for which the unfortunate James Crow had suffered. A gentleman, a native of York, who happened to be at Dublin at the time of Geddely's trial and execution, and who knew him when he lived with Mrs. Williams, declared that the resemblance between the two men was so remarkable that it was next to impossible to distinguish their persons assunder.

VI.

Case of Joseph Lesurques.

One of the most lamentable cases of mistaken identity was that of Lesurques, the history of which may be summed up as follows:

In the month of April, 1796, a young man named Joseph Lesurques arrived in Paris from Douai, his native town. He was thirty-three years of age, and possessed a fortune equal to six hundred pounds a year. He hired apartments, and made preparations for residing permanently in Paris. One of his first cares was to repay one Guesno, of Douai, two thousand francs he had borrowed of him. On the following day Guesno invited Lesurques to breakfast. They accordingly went to a refreshment room, in company with two other persons, one of whom, named Couriol, happened to call just as they were sitting down to table. After breakfast they proceeded to the Palais Royal, and having taken coffee, separated. Four days afterwards, four horsemen, mounted on hired horses, were seen to drive out of Paris. They all wore long cloaks and sabres hanging from the waist. One of the party was Couriol.

Between twelve and one o'clock the four horsemen arrived at the village of Mongeron, on the road to Melun. There they dined, and then proceeded at a foot pace towards Lieursaint. They reached Lieursaint about three in the afternoon, and made a long halt at the inn, amusing themselves with billiards, and one of them having his horse shod. At half-past seven they remounted and rode off towards Melun. About an hour later the mail courier from Paris to Lyons arrived to change horses. It was then half-past eight, and the night had been for some time dark. The courier, having changed horses, set out to pass the long forest of Leuart. The mail at this period was a sort of post-chaise, with a large trunk behind containing the dispatches. There was one place only open to the public, at the side of the courier; and the place was occupied on that day by a man about thirty years of age, who had that morning taken it in the name of Laborde.

The next morning the mail was found rifled, the courier dead in his seat, and the postilion lying dead in the road—both being evidently slain with sabres. One horse only was found near the carriage. The mail had been robbed of seventy-five thousand livres in silver and bank bills. The officers of justice soon discovered that five persons had passed through the

barrier on their way to Paris between four and five in the morning after the murders. The horse of the postilion was found wandering about the Place Royale; and they ascertained that four horses, covered with foam and quite exhausted, had been brought, about five in the morning, to a man named Muiron, Rue des Fosses, Saint Germain l'Auxerrois, by two persons who had hired them the day before. These two persons were named Bernard and Couriol. Bernard was immediately arrested; Couriol escaped. A description was obtained of the four who had ridden from Paris and stopped at Mongeron and Lieursaint, and also of the man who had taken his place with the courier under the name of Laborde. Couriol was traced to Chateau Thierry, where he was arrested, together with Guesno, the Douai carrier, and one Bruer, who happened to be in the same house. Guesno and Bruer proved *alibis* so clearly that they were discharged on arriving at Paris.

The magistrate, after discharging Guesno, told him to apply at his office the next morning for the return of his papers, which had been seized at Chateau Thierry; at the same time he had sent a police officer to Mongeron and Lieursaint to fetch the witnesses, of whom he gave a list. Guesno, being desirous to obtain his papers as soon as possible, left

home the next day earlier than usual. On his way to the office he met Lesurques, who consented to accompany him. They went to the office, and as Daubenton, the Juge-de-Paix, had not yet arrived, they sat down in the antechamber to await his arrival. About two o'clock the Juge-de-Paix, who had entered his room by a back door, was thunderstruck on being told by the police officer who had come back with the witnesses, that two of them declared that two of the actual murderers were in the house. "Impossible!" he exclaimed, "guilty men would not voluntarily venture here." Not believing the statement he ordered the two women to be introduced separately; and examined each of them, when they repeated their statement and declared they could not be mistaken. Warning them solemnly that life and death depended on their truth, he had the accused brought into the room one by one, and after conversing with them sent them again to the antechamber, where they waited as before. When they had left the room the magistrate again asked the women if they persisted in their previons declarations. They did persist; their evidence was taken down in writing; and the two friends were immediately arrested. No time was lost in pushing on the prosecution. Seven persons were put upon their trial, amongst

whom were Couriol, Madeline Breban (his mistress), Lesurques, and Guesno. Lesurques was sworn to most positively by several, as being one of the party, at different places on the road, on the day of the robbery and murder. It should be born in mind that the case was quite conclusive against Couriol. "I attended them (said one witness) at dinner at Mongeron; this one (Lesurques) wanted to pay the bill in assignats, but the tall dark one (Couriol) paid it in silver." A stable boy at Mongeron also identified him. A woman named Alfroy, of Lieursaint, and the innkeeper and his wife of the same place, all recognized him as of the party there—Lesurques declaring that he had never been present at either place. But the witnesses were positive, were unimpeached, were believed, and—were all mistaken. Lesurques and Couriol were convicted, Guesno, though as positively sworn to, proved his perfect innocence, and was acquitted. Lesurques called fifteen persons of known probity to prove an *alibi*, which was disbelieved in consequence of the folly of one of them, who falsified an entry in his book with the design of adding weight to the evidence in Lesurques's favor, but did it so clumsily that the falsification was discovered. Eighty persons of all classes declared the character of Lesurques to be irre-

proachable; but all was of no avail—he was condemned.

When the sentence was pronounced, rising from his place, he calmly said—"I am innocent of the crime imputed to me. Ah, citizens! if murder on the highway be atrocious, it is not less a crime to execute an innocent man."

Madeline Breban, though compromising herself, wildly exclaimed—"Lesurques is innocent—he is the victim of his fatal likeness to Dubosq."

Couriol then, addressing the judges, said—"I am guilty; I acknowledge my crime; my accomplices were Vidal, Rossi, Durochat, and Dubosq; but Lesurques is innocent."

After the sentence had been pronounced, the horror-stricken Madeline again presented herself before the judges to reiterate her declaration, and two other witnesses attested to her having told them so before the trial. The judges applied to the Directory for a reprieve; and the Directory applied to the Council of Five Hundred, requesting instructions for their guidance, and concluding with the emphatic question—"Ought Lesurques to die on the scaffold because he resembles a criminal?" The answer was prompt: "The jury had legally sentenced the accused, and the right of pardon had been abolished."

Left to his fate, poor Lesurques on the morning of his execution thus wrote to his wife:—"My dear friend, we cannot avoid our fate. I shall, at any rate, endure mine with the courage which becomes a man. I send some locks of my hair. When my children are older, divide it with them. It is the only thing that I can leave them."

Couriol had disclosed to Lesurques the history of Dubosq, and the fatal mistake which had been made, and accordingly, on the eve of his death, he had the following mournful letter inserted in the journals: "Man, in whose place I am to die, be satisfied with the sacrifice of my life; if you be ever brought to justice, think of my three children covered with shame, and of their mother's despair, and do not prolong the misfortunes of so fatal a resemblance."

On the 10th of March, 1797, Lesurques went to the place of execution dressed completely in white, as a symbol of his innocence. On the way from the prison to the place of execution, Couriol, who was seated in the car beside him, cried in a loud voice, addressing the people, "I am guilty; but Lesurques is innocent." On reaching the scaffold, Lesurques gave himself up to the executioners, and died protesting his innocence.

In consequence of his own misgivings, and of murmurs on the part of the public, Daubenton, the Juge-de-Paix, who had arrested Lesurques, and conducted the first proceedings, resolved to investigate the truth, which could only be satisfactorily done through the arrest and trial of the four persons denounced by Couriol as his accomplices. Two years elapsed in vain inquiries. At the end of that time, he discovered that Durochat—the man who, under the name of Laborde, had taken the place by the side of the courier—had been arrested for a robbery, and lodged in St. Pelagie.

When the trial of the villain came on, he was, through the exertions of Daubenton, recognized by the inspector of the mails as the man who traveled with the courier on the day of the assassination. When charged with the fact, he made at first some faint denials, and subsequently he confessed, relating the particulars of the crime, all which tallied with the statements made by Couriol. He stated that Vidal had projected the affair, and had communicated it to him as a *restaurant* in the Champs Elysees. The criminals were Couriol, Rossi, (*alias* Beroldy), Vidal, himself, and Dubosq. Dubosq had forged for him the passport in the name of Laborde, by means of which he easily procured another for

Lyons, to enable him to take his place in the mail. Bernard had supplied the four horses. They had attacked the carriage as the postilion was slackening his pace to ascend the hill. It was he (Durochat) who had stabbed the courier, at the instant that Rossi cut down the postilion with a sabre; Rossi had then given up his horse to him (Durochat), and had returned to Paris on that of the postilion. As soon as they arrived there, they all met at Dubosq's lodgings, where they proceeded to divide the booty. Bernard, who had only procured the horses, was there, and claimed his share, and got it. "I have heard," he added, "that there was a fellow named Lesurques condemned for this business; but, to tell the truth, I never knew the fellow, either at the planning of the affair, or at its execution, or at the division of the spoil."

Such was Durochat's confession as taken down in writing; he added a description of Dubosq, stating that on the day of the murder he wore a blonde wig.

Shortly after the arrest of Durochat, Vidal was also arrested. He was recognized by the witnesses and positively sworn to, but he denied everything, and was sent to the prison of La Seine. Towards the end of the year 1799, Dubosq, having been

arrested for a robbery in the department of Allier, was recognized in the prison and brought to Versailles to be tried at the same time as Vidal before the criminal tribunal. It was seen by the registers that Dubosq was a thorough desperado; he had been sentenced to the galleys for life, but had escaped, and on four several occasions had broken prison. Like Vidal, he denied everything. Confined in the same cell with his old companion in guilt, Dubosq planned an escape; but this time he broke his leg in the attempt—Vidal alone getting clear away—to be retaken, however, after a brief interval, to be brought back to trial—and to execution.

Strange as it may seem, Dubosq had no sooner recovered from his fracture, than he found another opportunity of attempting an escape, and for the sixth time succeeded in breaking his bonds. As he could not live without rapine, however, he fell again into the hands of the police before the expiration of a year, and was brought before the tribunal at Versailles. The president ordered a blonde wig to be put on his head, and thus attired, he was recognized by the same witnesses who had sworn away the life of Lesurques, who now recanted their former testimony, and declared too late that they had been mistaken.

After the execution of Dubosq, in Febuary, 1802, there still remained one of the accomplices to be brought to justice. This man, Rossi, whose real name was Beroldy, was at length discovered near Madrid, and was given up to the French government. Unlike Vidal and Dubosq, he confessed his crimes, testifying the utmost remorse. In the declaration, which he confided to his confessor, he affirmed the entire innocence of Lesurques; but, for a reason which does not appear, made it a condition that the declaration should not be published until six months after his death.

According to law, the property of Lesurques had been confiscated on his conviction, and his widow and children reduced to indigence. One would have thought that a government which had erred so egregiously as to execute a man for a crime of which he was not guilty, would have been eager to make what atonement was possible to the family of the victim. Nothing of the sort. The widow and her advisers, relying on the confessions of the real criminals, and the retractions of the witnesses, applied for a revision of the sentence, so far as concerned Lesurques, in order to obtain a judicial declaration of his innocence and the restoration of his property. All their endeavors were vain.

The right of revision no longer existed in the French code. Under the Directory, the Consulate, and the Restoration, the applications of the widow and family were equally unsuccessful. All that they could obtain was the restoration, in the last two years of the elder Bourbons, of a part of the property sequestrated at the condemnation of the unoffending husband and father.

VII.

Case of Thomas Williams.

On the 7th of February, 1851, in the dead of night, the house of David Williams, situated at Truasth, in the county of Brecknock, was broken open by forcing the shutters and window of an outhouse. Williams, an old man, who with his wife alone occupied the cottage, was alarmed by the noise, and going to the head of the stairs, saw by the light of a candle the person of a man whom he recognized as one Tom Williams, a blacksmith living in the neighborhood, and who had formerly done some work in the house. This was only for a moment, as the light was struck out, and the burglar attacked old Williams and his wife in the dark. However, they proved too strong for him, and compelled him to take to flight. Nothing was stolen, but the drawer of a dresser in the kitchen had been ransacked, and some papers of no value turned out of it. Tom Williams, the blacksmith, was tried at the following spring assizes at Brecon for the burglary, and as the old man, who had known him from his boyhood, swore to him posi-

tively, he was convicted, and sentenced to transportation. Happily for him, however, a person named Morris was present at the trial, who, on hearing the verdict, at once exculpated the convicted man, and directed the attention of the police to one Powell, as the real criminal. Strict inquiry was immediately instituted, the result of which was that Powell was committed. He was tried before the late Mr. Justice TALFOURD, and convicted on evidence perfectly conclusive. It seems old Williams had lent Powell six hundred pounds on mortgage, taking as security certain title deeds. Williams commenced proceedings to recover principal and interest, and Powell committed the burglary to possess himself of the documents; hence the ransacking of the dresser drawer in which he believed they had been deposited. The blacksmith was of course pardoned on the report of Mr. Justice TALFOURD, and was discharged in September. But the real criminal was also discharged, although his guilt was clear as the sun at noonday. The jury convicted him of breaking open the house "with intent to steal the title deeds;" the indictment charged his intent to be to "steal the goods and chattels." The Appeal Court held the conviction bad.

VIII.

Case of Professor Webster.

A CURIOUS case of identification occurred about twenty years ago. This was an instance in which the guilt of a crime was brought home to the perpetrator through the identifying of a body after it had been separated limb from limb, submitted to chemical processes, and to the inordinate heat of a furnace, and mingled with the countless bones of anatomical subjects in their common burying-place. One Professor Webster was brought to trial for the murder of Dr. Parkman. It was shown that the professor had urgent pecuniary motives at the time when the crime was committed, to get Dr. Parkman out of the way. The prisoner had a residence at the Medical College, Boston. He made an appointment to meet the deceased at this place at two o'clock on Friday, the 23rd of November, 1849, in order to discuss certain money matters. Dr. Parkman was seen about a quarter before two o'clock apparently about to enter the Medical College, and after that was never again seen alive. The prisoner affirmed that Dr. Parkman did not keep his appoint

ment, and did not enter the college at all on that day. For a whole week nothing was discovered, and when search was made the prisoner interfered with it, and threw hindrances in the way.

On the Friday week and the day following there were found in a furnace connected with the prisoner's laboratory in the college, fused together indiscriminately with the slag, the cinders, and the refuse of the fuel, a large number of bones and certain blocks of mineral teeth. A quantity of gold, which had been melted, was also found. Other bones were found in a vault under the college. There was also discovered in a tea-chest, and embedded in a quantity of tan, the entire trunk of a human body and other bones. The parts thus collected together from different places, made the entire body of a person of Dr. Parkman's age, about sixty years, and the form of the body when reconstructed had just the peculiarities shown to be possessed by Dr. Parkman. In no single particular were the parts dissimilar to these of the deceased, nor in the tea-chest or the furnace were any duplicate parts found over and above what was necessary to compose one body.

The remains were further shown to have been separated by a person possessed of anatomical skill,

though not for anatomical purposes. Finally, three witnesses, dentists, testified to the mineral teeth found being those made for Dr. Parkman three years before. A mould of the doctor's jaw had been made at the time, and it was produced, and shown to be so peculiar that no accidental conformity of the teeth to the jaw could possibly account for the adaptation. This last piece of evidence was conclusive against the prisoner, and he was convicted. Without this closing proof the evidence would certainly have been unsatisfactory. The character of the prisoner, the possible confusion throughout the college of the remains of anatomical subjects, the undistinguished features, and the illusiveness of evidence derived from the likeness of a reconstructed body, were all facts of a nature to substantiate assumptions in favor of the prisoner's innocence. It is singular that the block of mineral teeth was only accidentally preserved, having been found so near the bottom of the furnace as to take the current of cold air, whose impact had prevented the thorough combustion that would otherwise have taken place.

IX.

Case of William Harrison.

On the 6th of August, 1660, William Harrison, who was steward to Lady Campden, a person of good estate in Gloucestershire, left his home in order to collect her rents. There happened to reside in the neighborhood a humble family of the name of Perry, a mother and two sons, Joan, John, and Richard, of whom Joan, the mother, bore but an indifferent character, and John, one of the sons, was known to be half-witted. It so happened that days and weeks elapsed, and yet Harrison did not return nor were any tidings heard of him. Of course, the population of the place became excited, and rumors soon became rife that he had been robbed and murdered. From the mission on which he was known to have left his home, and his prolonged absence, the suspicion was not unnatural. The alarm which ensued, and the numberless inventions which were circulated, are supposed to have bewildered what little intellect the poor idiot had, for he actually went before a justice of the peace, and solemnly deposed to the murder of Harrison by his

brother Richard, while his mother and himself looked on, and afterwards joined in robbing the deceased of a hundred and forty pounds. On this the whole three were sent to prison, and at the following assizes were doubly indicted for the robbery and the murder. The presiding judge, Sir CHARLES TURNER, refused to try them on the murder indictment, as the body had not been found; they were, however, arraigned on the charge of robbery, and pleaded guilty on some vague superstition that their lives would be spared. While in confinement John persisted in the charge, adding that his mother and brother had attempted to poison him in the jail for peaching. When the next assizes came, Sir ROBERT HYDE, considering the length of time which had elapsed, and the non-appearance of Harrison, tried them for the murder. The depositions of John, and the plea on the indictment for robbery, were given in evidence, and the whole three were forthwith convicted. On the trial John retracted his accusation, declaring that he was mad when he made it, and knew not what he said. They all suffered death. The mother was executed first, it being alleged that she influenced her sons, and that they would never confess while she was living; they died, however,

loudly protesting their innocence. But the disappearance of Harrison, the confession of John, and the plea of "guilty" to the indictment for robbery, seemed to invest the case with every human certainty.

After this poor, ignorant, and deluded family had lain in the grave for three years, the people of Gloucester were startled by the reappearance in their streets of the murdered Harrison! He accounted for his long absence thus, in a letter to Sir Thomas Overbury. On returning homewards after the receipt of Lady Campden's rents, he was set upon by a gang of crimps, who forced him to the seashore, where they hurried him on shipboard and carried him off to Turkey. They there sold him as a slave to a physician, with whom he lived for nearly two years, when, his master dying, he made his escape in a Hamburg vessel to Lisbon, and was thence conveyed to England.

X.

Case of Thomas Wood.

On the 6th of October, 1806, Thomas Wood, a young seaman, was tried at Plymouth by naval court-martial. The offense charged was an active participation in a mutiny and murder on board the "Hermione," in 1797. At the time of his trial, he was only twenty-five years old, and therefore somewhere about sixteen when the mutiny took place. There was but one witness against him; one, however, whose testimony had considerable weight—the master of the "Hermione." This person most positively identified him as one of those chiefly implicated, and as having gone, when on board his ship, by the name of James Hayes. The identification undoubtedly was strong; but still, considering the personal changes which generally take place between the age of sixteen and twenty-five, and after an interruption of nine years in the intercourse, scarcely strong enough to warrant a conviction. But all doubt of the prisoner's guilt vanished at once before the voluntary statement which he put in, in the form of a written document. "At the time,"

said the written statement, "when the mutiny took place, I was a boy in my fourteenth year. Compelled by the torrent of mutiny, I took the oath administered to me on the occasion. The examples of death which were before my eyes drove me for shelter among the mutineers, dreading a similar fate with those that fell if I sided with or showed the smallest inclination for mercy." To this frank and sweeping confession of his guilt he added a declaration of profound remorse for his crime, and wound up by throwing himself despairingly on the compassion of the court. The court found him guilty, passed upon him the sentence of death, and eleven days afterwards he was executed. In vain were all his supplications for compassion. In vain did his brother and sister interfere, proving, by a certificate from the Navy Office, that his written statement must have been a mere hallucination, seeing that the boy was at another place and in another ship when the crime was committed on board the "Hermione."

The subsequent establishment of this poor victim's innocence was most complete and satisfactory. The editor of a weekly journal, called the "Independent Whig," took up the matter very sternly, and denounced all the proceedings so indignantly from time to time that the members of the court-martial ap-

pealed to the Lords of the Admiralty for protection against the journalist. The Lords of the Admiralty responded to the appeal, and a prosecution was at once instituted. It was fortunate that the then law officers of the crown were Sir Arthur Pigott and Sir Samuel Romilly. These discreet men deemed it prudent to set on foot a strict inquiry into the facts before committing themselves to a public prosecution, "not, however," as Sir Samuel afterwards stated, "that either of us entertained any doubt as to the man's guilt." An inquiry was accordingly instituted by the solicitor of the Admiralty, the result of which was that Thomas Wood, who had been hanged for mutiny and murder, was proved to have been perfectly innocent, and was actually shown to have been doing his duty on board the "Marlborough" at Portsmouth at the very time that the crime was committed by the mutineers in the "Hermione." The reader naturally asks, How came Thomas Wood, if he was an innocent man, to confess himself guilty? The answer is not far to seek. Wood was a simple-minded Jack tar; he had no friends of any influence; he knew, or thought he knew, that no assertions of his would be of any avail against the positive evidence of the master of the "Hermione;" he therefore applied to another man

to write a defense for him. Wood read the production of his comrade, and thinking it likely to excite the compassion of his judges, and that it would serve him better that a mere denial of the charges brought against him, adopted it. That the means chosen by his ignorant comrade for his defense proved his destruction, there can be no doubt. The confession acted as a bar to further inquiry, otherwise it is impossible to conceive that the certificate sent in by the brother and sister previous to the execution, and which showed the poor man's innocence, should not have been attended to. The truth was, that to all concerned in the condemnation of Thomas Wood, the facts were so clear, owing to the confession, that no regard whatever was paid to the exertions of his friends, and the official certificate was not merely slighted, it was probably never read.

XI.

Case of Gonnt Montgomery.

On the first floor of a large hotel in the Rue Royale, at Paris, resided the Count and Countess de Montgomery. The Count was a personage of rank, and the possessor of considerable property, maintaining a numerous retinue of attendants, and an almoner, who formed part of the establishment. On the second and third floors of the same hotel the Sieur d'Anglade resided with his lady in a style of considerable respectability. The two families lived on the most amicable terms. It so happened that on one occasion the count and countess invited these neighbors to accompany them on a visit to one of their country seats. The invitation, at first accepted, was, for some unexplained reason, subsequently declined when the count and countess were just on the eve of their departure. Many of their numerous suite accompanied the family, and amongst these was the priest-almoner, Francis Gagnard. From some presentiment, it was said, pressing on the mind of the count, they returned to Paris the day before they were expected, and in the evening they received a

visit from the d'Anglades. On the following day the unwelcome discovery was made that the count's strong box had been opened by a false key, and completely plundered. It contents were thirteen small sacks with a thousand silver livres in each. In addition to these were near twelve thousand livres in gold, some double pistoles, a hundred louis d'or, of a new coinage called *au cordon*, and a pearl necklace worth four thousand livres. The whole had vanished.

The lieutenant of police having been consulted, at once pronounced the crime to have been perpetrated by some one within the house, and seems to have conceived and manifested a violent prejudice against the d'Anglade family. On observing this they immediately demanded that their apartments should be examined, and a strict search was made, their very beds having been ripped up, but nothing whatever was found to implicate any one in the floors which they inhabited. In an attic, however, which had been used as a kind of lumber-room, there were discovered, in an old trunk filled with parchments and rubbish, seventy louis d'or *au cordon*, wrapped up in a paper on which a genealogical table was printed, both of which Montgomery claimed, although the coin had no peculiar

mark, and was in general circulation. From this moment the suspicions entertained by the lieutenant were adopted by the count. He loudly avouched the honesty of all his servants, and invidiously adverted to the theft of a piece of plate from the Sieur Grimandet, a former tenant, the d'Anglades at the same time living in the hotel. These suspicions were strengthened by the fact that it was known that d'Anglade had expensive habits, and that on their desiring him to count the coin he was observed to tremble. His trembling was the agitation of innocence under an accusation false but plausible. After this the small room in which the almoner, a page, and a *valet de chambre* slept, was subjected to a close search, and here, in a recess in the wall, were found five sacks containing a thousand livres each, and a sixth from which two hundred had been extracted. The d'Anglades were committed to prison, and it seems, by the law of France, the prejudiced police lieutenant who committed was the judge by whom they were to be tried. D'Anglade appealed to the parliament against this foul prejudgment, but he appealed in vain. It would appear that Count Montgomery had his misgivings, for he ordered his almoner, the priest Gagnard, to say a solemn mass at the church

of Saint Esprit for the detection of the culprits; and accordingly the "holy man" so fervently implored the aid of the Divine Being that the prosecutor's conscience was at rest. The almoner was examined as a witness at the trial, though what was the nature of his evidence does not appear; whatever it may have been, satisfactory proofs were wanting to inculpate the accused. The public eye was upon the judge, and, without plausible proof, even a prejudiced judge shrank from pronouncing judgment. But he had an alternative, which at that time unhappily was legal. What the witnesses failed in proving, the torture might goad the accused to confess; they therefore put d'Anglade to the question, ordinary and extraordinary — they tormented him even to the verge of death, and then, covered over with wounds, his back dislocated, his whole frame shattered, all in ruins save a noble nature, they bore him back to prison beseeching God to manifest his innocence, and to pardon his inhuman persecutors and his inexorable judge. Although they failed to prove his guilt, they sentenced him to restore the amount which had been stolen, and to serve for nine years chained as a galley-slave. From this last degradation he was saved by death, for he sank in his

dungeon at Marseilles, having received the sacraments. His poor widow and orphan, stripped of everything, even of the bed on which they lay, were banished from Paris and its precincts, and cast upon the world, forsaken and heartbroken.

After the death of d'Anglade and the utter desolation of his family, their innocence was clearly demonstrated. Inquiry was instituted in consequence of some letters which, at first anonymous, appear to have been written by an Abbé de Fontpierre, and the truth was brought to light. This son of the church and expounder of doctrine was a member of a thieves' society, and, as such, an associate of one Belestré, who was the principal in the crime. What motive impelled Fontpierre to write the letters—whether it was some quarrel with Belestré, or remorse at the fate of d'Anglade—does not appear. Belestre could not have accomplished the crime without assistance, and such was afforded him by Francis Gagnard, the inmate of Montgomery's house, and his trusted almoner, the reverend divine who actually celebrated the sacred ceremony at Saint Esprit for the discovery of the criminals. Gagnard and Belestré, both natives of the town of Mons, had been associated from infancy. The former was the son of a jailer; he had

journeyed to Paris as an adventurer, and was eking out a mere subsistence by saying masses at Saint Esprit, when Montgomery admitted him on his establishment. The return he made was the furnishing his friend Belestré with wax impressions of all the keys he found there. It turned out that Belestré was a still greater villain than himself, having been in the army, from which he deserted after murdering his sergeant, and was afterwards prowling about the dens of Paris, alternately a gambler, a beggar, and a bully. Gagnard left the service of Montgomery after the conviction of d'Anglade, and following his criminal bent, soon found himself in prison, and, strangely enough, in the same cell with Belestré, arrested about the same time on a different charge. In the mean time the contents of the anonymous letters having much impressed the authorities, it occurred to them to interrogate the count's late almoner and his fellow prisoner as to the robbery in the Rue Royale. They were first examined apart, and an immediate prosecution was the result. The Abbé de Fontpierre gave most important evidence. Amongst other things he deposed, that being in a room adjoining one in which the accused was holding a revel, he heard Belestré say, "Come,

my friend, let us drink and be merry, while d'Anglade is at the galleys." "Poor man," answered the almoner, "I can't help being sorry for him; he is a good sort of man, and was always obliging to me." "Sorry!" said the other, with a laugh, "sorry for the man who has saved us from suspicion and made our fortune!" A woman named De la Comble deposed that Belestré frequently showed her a beautiful pearl necklace, which he said he had won at play. Upon Belestré there was a gazette of Holland, in which, after reference to the d'Anglade case, there was a positive statement that the men who were really guilty of that robbery had been since executed at Orleans for another crime. Of this it was supposed he had himself procured the insertion in order to lull inquiry. Unfortunately, however, for him and his confederate, there was also found on him a document, in Gagnard's writing, alluding to the anonymous letters, and advising him by some means or other to quiet or to rid himself of the Abbé de Fontpierre. In addition to this it was shown that Gagnard, who on entering the count's service was almost destitute, and who could have saved but little from his salary, had on leaving it a profusion of money, which he

lavished in feasting and debauchery. Belestré, also, was proved at the same period to have purchased an estate at Mons, where his father was a humble tanner. Madame d'Anglade completely cleared up the paltry suspicions by which her husband had been sacrificed; but it is needless to detail the particulars of the exculpation, as the criminals made a full confession of their guilt. Indeed, Gagnard went farther, and declared that, had he been closely interrogated during the first inquiry, such was his confusion, he must have admitted everything. But the mind of the judge was all intent on vindicating the prejudices in which he never should have indulged.

XII.

Case of Le Brun.

THERE lived in Paris a woman of fashion, known as Lady Mazel. Her house was roomy and lofty; on the ground floor was a large hall in which was a grand staircase; in a room opening into the hall slept the valet, whose name was Le Brun; the rest of this floor consisting of apartments in which the lady saw company. In the floor up one pair of stairs was the lady's own chamber, which was in front of the house, and was the innermost of three rooms from the grand staircase. The key of this chamber was usually taken out of the door and laid on a chair by the servant who was last with the lady, and who, pulling the door after her, shut it with a spring, so that it could not be opened from without. In this chamber, also were two doors—one communicating with a back staircase, the other with a wardrobe which also opened on the back stairs. On the second floor slept the Abbé Poulard; and on the third story were the chambers allotted to the servants; the fourth story consisted of lofts and granaries, whose doors were always open.

On the last Sunday in November, the two daughters of Le Brun, the valet, who were fashionable milliners, waited on the lady, and were kindly received; but, as she was going to church to the afternoon service, she pressed them to come again when she could have more of their company. Le Brun attended his lady to church, and then went to another himself, after which he went to several places, and having supped with a friend, he went home. Lady Mazel supped with the Abbé Poulard, as usual, and about eleven o'clock retired to her chamber, attended by her maids. Before they left her Le Brun came to the door to receive his orders for the next day; then one of the maids laid the key of the room door on the chair next it—they went out, and Le Brun following shut the door after him.

In the morning he went to market, made his purchases, and returning home transacted his business as usual. At eight o'clock he expressed surprise that his lady did not get up, as she generally rose early. He went to his wife's lodging, which was close by, told her he was uneasy that his lady's bell had not rung, and gave her some money which he desired her to lock up; he then went home again, and found the servants dis-

mayed at hearing nothing of their lady. When one of them observed that he feared she had been seized with an illness, Le Brun said, "It must be something worse; my mind misgives me, for I found the street door open last night after all the family were in bed." They then sent for the lady's son, M. de Savoniere, who hinted to Le Brun his fear of an apoplexy. Le Brun replied that he feared something worse, and again mentioned his having found the street door open. A smith was sent for, the door was broken open, and Le Brun, running to the bed, after calling several times, threw back the curtains and cried out, "Oh, my lady is murdered!" He then ran to the wardrobe and took up the strong box, and finding it heavy, said, "She has not been robbed, how is this?" The body, on examination, showed no less than fifty wounds; they found in the bed a scrap of a cravat of coarse lace, and a napkin made into a nightcap, which was blood-stained, and had the family mark on it. From the wounds on the lady's hand, it appeared she had struggled bravely with the assassin; she could not ring for aid, the bell-strings being twisted round the tester, and thus out of her reach. A knife was found in the ashes almost consumed by the fire; the key of the chamber had been

taken from the chair; but there were no marks of violence on any of the doors, nor were there any indications of a robbery, as a large sum of money and all the lady's jewels were found in the strong box and other places.

On being examined, Le Brun stated that after he left the maids on the stairs, he went down into the kitchen, and, sitting down by the fire, he fell asleep; that he slept, as he thought, about an hour, and going to lock the street door, he found it open; that he locked it, and took the key with him to his chamber. When searched, there was found in his pocket a key, the wards of which had been enlarged by filing, and which was found to open the street door, the antechamber, and both the doors in Lady Mazel's chamber. On trying the bloody nightcap on Le Brun's head, it was found to fit him exactly, whereupon he was committed to prison.

At the trial, it appeared that the lady had been murdered by some persons who had been admitted by Le Brun for the purpose. He could not himself have done it, because there was no blood upon his clothes, nor any scratch on his person, as there must have been on the murderer from the victim's struggling. But that Le Brun had let him in seemed clear. None of the locks were forced, and his

story of finding the street door open, the circumstances of the key and the nightcap, also of a ladder of ropes being found in the house, which might be supposed to be laid there by Le Brun to take off the attention from himself, were all interpreted as proofs of his guilt. It was inferred that he had an accomplice, because part of the cravat found in the bed was discovered not to be his, *but the maids deposed that they had washed such a cravat for one Berry, who had been a footman to the lady, and who was turned away about four months before for robbing her.* There was also found in the loft at the top of the house, under some straw, a shirt very bloody, but which evidently had never belonged to Le Brun. The accused had nothing to oppose to these strong circumstances but his long and faithful service, and his uniformly good character. It was resolved to put him to the torture in order to discover his accomplices. This was done with such severity that he died in a few days of the injuries he received, declaring his innocence with his dying breath.

Poor Le Brun had scarcely been dead a month, when there came information from the provost of Sens, that a dealer in horses had lately set up there by the name of John Garlet, but whose real name

was found to be Berry, and that he had been a footman in Paris. In consequence of this, he was taken up, and the suspicion of his guilt was increased by his attempting to bribe the officers. On searching him, a gold watch was found, which proved to be Lady Mazel's. A person in Paris swore to seeing him go out of Lady Mazel's, the night she was murdered; and a barber swore to shaving him next morning, when, on his remarking to his customer that his hands were very much scratched, Berry said he had been killing a cat. His guilt being evident, he was condemned to the torture, and afterwards to be broken alive on the wheel. Under the torture, he made, as many others have done, a false confession, declaring that at the instigation of Madame de Savoniere, Lady Mazel's daughter, he and Le Brun had undertaken to rob and murder the lady, and that Le Brun murdered her while he guarded the door to prevent surprise. But when brought to the place of execution, he recanted what he had said against Le Brun and Madame de Savoniere, and confessed "that he came to Paris on the Wednesday before the murder was committed. On the Friday evening he went into the house, and unperceived, got into one of the lofts, where he lay till Sunday morning, subsisting

on apples and bread, which he had in his pockets; that about eleven o'clock on Sunday morning, when he knew the lady had gone to church, he stole down to her chamber, and the door being open, he tried to get under the bed; but it being too low, he returned to the loft, pulled off his coat and waistcoat, and returned to the chamber a second time, in his shirt. He then got under the bed, where he continued till the afternoon, when Lady Mazel went to church; that knowing she would not come back soon, he left his hiding-place, and being incommoded with his hat, he threw it under the bed, and made a cap of a napkin which lay on a chair, secured the bell-strings, and then sat down by the fire, where he continued till he heard her coach drive into the courtyard, when he again got under the bed and remained there; that Lady Mazel having been in bed about an hour, he got from under it, and demanded her money; she began to cry out, and attempted to ring, upon which he stabbed her, and she resisting with all her strength, he repeated the stabs till she was dead; that he then took the key of the wardrobe cupboard from the bed's head, opened the cupboard, found the key of the strong box, opened it and took out all the gold he could find, to the amount of about six hundred livres;

that he then locked the cupboard, and replaced the key at the bed's head, threw his knife into the fire, took his hat from under the bed, left the napkin in it, took the key of the chamber from the chair, and let himself out; went to the loft, where he pulled off his shirt and cravat, and leaving them there, put on his coat and waistcoat, and stole softly down stairs; and finding the street door only on the single lock, he opened it, went out, and left it open; that he had brought a rope ladder to let himself down from a widow if he had found the street door double locked, but finding it otherwise, he left the rope ladder at the bottom of the stairs, where it was found."

Thus was this foul mystery cleared up—and thus were all the circumstances which appeared against Le Brun accounted for, consistently with his innocence. Le Brun perished, as d'Anglade had perished, through the headlong precipitancy of the criminal court and the judge.

XIII.

Case of Eliza Fenning.

A MOST melancholy case of circumstantial evidence happened in London, in the year 1815, the particulars of which must yet dwell in the memories of many still living. Eliza Fenning was a servant girl, very young, and said to be very beautiful, living in Chancery Lane. She was but twenty-one years of age, the dutiful and only child of respectable parents, then alive. She was tried at the Old Bailey, in the month of April, 1815, before the recorder of London, for the crime of administering poison to her master and mistress, and her master's father—a capital felony under Lord ELLENBOROUGH'S Act. The only evidence to affect the prisoner was entirely circumstantial. The poison was contained in dumplings made by her, but it was proved by the surgeon, who gave evidence at the trial, that she had eaten of them herself, and had been quite as ill as any of the persons whom she was supposed to have intended to poison. Further, her eating of them could not be ascribed to art, or to any attempt to conceal her crime, for

she had made no effort whatever to remove the strongest evidence of guilt, if guilt there was. She had left the dish unwashed; and the proof that arsenic was mixed it it, was furnished by its being found in the kitchen on the following day, exactly in the state in which it had been brought from the table.

It is hardly conceivable that, such being the circumstances, a conviction could have been possible. "But," says Sir SAMUEL ROMILLY, from whose manuscript this account is condensed, "the recorder appeared to have conceived a strong prejudice against the prisoner; in summing up the evidence, he made some very unjust and unfounded observations to her disadvantage, and she was convicted." Petitions signed, not by hundreds, but by thousands, besought the throne for mercy. The master of the girl was requested to add his name to the petitioners on her behalf, but the recorder dissuaded him, and at his instance he refused. All intercession was fruitless, and Eliza Fenning was ordered for execution. She mildly, but earnestly, asserted her innocence to the last, and prayed to God some day to make it manifest. When the religious ceremonies were over, the sad procession moved towards the scaffold. As the last door was opening which still

concealed her from the public gaze, Mr. Cotton, the ordinary, made a final effort: "Eliza, have you nothing more to say to me?" It was an awful moment, but her last words in this world were, "Before the just and Almighty God, and by the faith of the Holy Sacrament I have received, I am innocent of the offense of which I am charged." The door then opened, and she stood robed in white, before the people. Two old offenders were executed with her, "and," says a bystander, "as all three stood under the beam, beneath the sun, she looked serene as angel." The stormy multitude was hushed at once, and while all eyes wept, and every tongue prayed for her, she passed into eternity.

When the curtain had fallen upon this tragedy, the fury of the people knew no bounds, and the house of the prosecutor was protected only by the presence of a considerable force. The temper of the times was such that nothing could prevent a popular demonstration at the funeral, and a mournful and striking one it must have been. The broken-hearted parents led the way, followed by six young females clad in white, and then by eight chief mourners. At least ten thousand persons accompanied the hearse, and thus, every window filled, and every housetop crowded, they reached the cemetery of St. George

the Martyr, where the remains of the innocent girl was interred.

Sir SAMUEL ROMILLY further states, that after Eliza Fenning's conviction, and while the error was reparable, "an offer was made to prove that there was in the house of Eliza's master, when the poisoning took place, a person who had labored, a short time before, under mental derangement, and who, in that state, had declared his fears that he should destroy himself and his family." This statement was made to the recorder himself, and evidence of its truth was offered, but that functionary affirmed that the production of any evidence of the kind would be wholly useless. That the crime was committed by a maniac, there can be but small doubt. The testimony of Mr. Gibson, who was then connected with the firm of Corbyn & Co., Holborn, is all but conclusive on the point. This gentleman stated that "about September or October, in the preceding year, a Mr. —— (the name, for obvious reasons, was not made public), called on me in Holborn. He seemed in such a wild and deranged state, that I took him into a back room, where he used the most violent and incoherent expressions—'My dear Gibson, do, for Heaven's sake, get me secured or confined, for if I am left at liberty I

shall do some mischief; I shall destroy myself and my wife. I must and shall do it unless all means of destruction are removed out of my way; therefore do, my good friend, have me put under some restraint; *something from above* tells me I must do it, and, unless I am prevented, I shall certainly do it." Mr. Gibson felt it his duty to communicate this to the poor maniac's family, but they were heedless of the warning, and he was left at liberty.

XIV.

Case of Richard Coleman.

About the middle of the last century, Richard Coleman was indicted at the Kingston assizes, in Surrey, for the murder of Sarah Green. Coleman was a man of some education, was married and had several children, and was clerk to a brewer when the affair happened which cost him his life. One Sarah Green, a woman of a humble class, was attacked by three men, who maltreated her so cruelly that she afterwards died. These men had the appearance of brewers' servants, and while she was under treatment in the hospital, she declared that a clerk in Berry's brewhouse was one of them, though it was not clear to whom she alluded. Two days after the transaction, Coleman went into an alehouse for refreshment, where he met with one Daniel Trotman, whom he knew. Having called for some spirits and water, Coleman was stirring it with a spoon, when a stranger who was present, asked him what he had done with the pig—alluding to a pig which had been lately stolen in the neighborhood. The retort led to a violent

quarrel, in the course of which, the stranger insinuated that Coleman had been concerned in the murder of Sarah Green. Coleman answered the insinuation only by further aggravating his opponent. There was no breach of the peace, and the parties separated at length, with mutual ill-temper and personal abuse.

A day or two after this quarrel, Daniel Trotman and another man went before a magistrate in the Borough, and charged Coleman with the crime. The magistrate, not supposing that Coleman was guilty, sent a man with him to the hospital where the wounded woman lay, and a person pointing out Coleman, asked her if he was one of the persons who assailed her. She said she believed he was, but as she declined to swear positively to his having any concern in the affair, the magistrate, Justice CLARKE, admitted him to bail. A short time afterwards Coleman was again taken before the magistrate, when nothing positive being sworn against him, the justice would have absolutely discharged him; but Mr. Wynne, the master of the injured girl, requesting that he might be once more taken to see her, a time was fixed for that purpose, and the justice took Coleman's word for his appearance. He came punctually to his time,

bringing with him the landlord of an alehouse where Sarah Green had been drinking on the night of the crime with the three men who were really guilty; and this publican, and other people, declared on oath that Coleman was not one of the party. On the following day, Justice CLARKE went to the hospital to take the examination of the woman on oath. Having asked her if Coleman was one of the men who had attacked her, she said she could not tell, as it was dark at the time, but Coleman being called in, an oath was administered to her, when she swore that he was one of the three assailants. Spite of her oath, the justice, who thought the poor girl not in her right senses, and was convinced in his own mind of the innocence of Coleman, permitted him to depart, on his promise of bringing bail the following day, to answer the complaint at the next assizes for Surrey; and he brought his bail and gave security accordingly.

Sarah Green dying in the hospital, the coroner's jury sat to inquire the cause of her death; and having found a verdict of willful murder against Richard Coleman and two persons then unknown, a warrant was issued to take Coleman into custody. Though conscious of his innocence, yet such was the agitation of his mind at the idea of being sent to prison

on such a charge, that Coleman absconded, and secreted himself at Pinner, near Harrow-on-the-Hill. The king being then at Hanover, a proclamation was issued by the lords of the regency, offering a reward of fifty pounds for the apprehension of the supposed offender; and to this the parish of Saint Saviour, Southwark, added a further sum of twenty pounds. Coleman read in the "Gazette" an advertisement for his apprehension, but was still so thoughtless as to conceal himself, though perhaps an immediate and voluntary surrender would have been his wisest course. However, to assert his innocence, he caused the following advertisement to be printed in the newspapers:

"I, Richard Coleman, seeing myself advertised in the 'Gazette' as absconding on account of the murder of Sarah Green, knowing myself not any way culpable, do assert that I have not absconded from justice, but will willingly and readily appear at the next assizes, knowing that my innocence will acquit me."

The authorities, not choosing to wait for his promised appearance, however, made strict search after him, and he was apprehended at Pinner on the 22nd of November, and lodged in Southwark jail till the time of the assizes at Kingston, Surrey.

At the trial several persons swore positively that Coleman was at another place at the time the crime was committed; but their evidence was not believed, and he was convicted principally upon the evidence of Daniel Trotman, and the declaration of the dying woman. After conviction, Coleman behaved like a man possessed of conscious innocence, and betrayed no fear in dying for a crime which he had not com mitted. At the place of execution, he delivered to the chaplain who had attended him a paper, in which he declared, in the most solemn and explicit manner, that he was altogether innocent of the crime alleged against him. He was executed at Kennington Common, on the 12th of April, 1749— and died with perfect resignation, lamenting only the distress in which he should leave a wife and two children.

About two years after Coleman's death, it was discovered that three working brewers named James Welch, Thomas Jones, and John Nichols, were the persons who had actually occasioned the death of Sarah Green. These wretches had been intimately acquainted from their childhood, and had kept the murder a secret, till it was discovered in the following manner. Welch, and a young fellow named James Bush, were walking together in the

neighborhood of Newington, when their conversation happened to turn on the subject of persons who had been executed for offenses of which they had not been guilty—"Among whom," said Welch, as if by a sudden impulse, "was Richard Coleman. Nichols, Jones, and I, were the persons who committed the murder for which he was hanged." Welch then went on to relate the circumstances of the crime—his companion listening to the disclosure with feelings that may be imagined. Bush scarcely credited the story thus abruptly communicated, and for a time said nothing about it to any one; at length, however, he told his father what he had heard, and his father meeting shortly afterwards with Thomas Jones, and willing to test the truth of so strange a tale, abruptly charged him with being one of the murderers of Sarah Green. Jones trembled and turned pale at the charge, but soon assuming a degree of courage, said: "What does it signify? The man is hanged, and the woman is dead, and nobody can hurt us." In consequence of this acknowledgment, Nichols, Jones, and Welch were apprehended, when all of them steadily denied their guilt. Nichols, however, subsequently turned against his companions, and was admitted as evidence for the crown.

The prisoners being brought to trial at the next Surrey assizes, were both of them convicted on the testimony of Nichols, and sentence of death was passed upon them. After conviction, they behaved with the utmost contrition, and made a full confession of their crime. They likewise signed a declaration which they begged might be published, containing the fullest assertions of Coleman's *innocence.*

XV.

Case of William Shaw.

ANOTHER case, in which an innocent man was convicted on the evidence of a dying person, was that of William Shaw, of Leith. Shaw was an artisan, and lived in that town respectably for his station in life, his family consisting but of an only daughter, who resided with him; she had formed an unfortunate attachment to a young man whom the father knew to be of bad character, and therefore sternly discountenanced his addresses. This gave rise to continual dissension, until, at length, it one day rose to such a height, that James Morrison, the tenant of an adjoining room, could not avoid overhearing the conversation. The voices of father and daughter were recognized, and the words, "cruelty," "barbarity," and "death," were over and over again angrily enunciated. The father at last left the room abruptly, locking the door behind him, and leaving the daughter a prisoner. After some little time, deep noises were heard from within, which gradually becoming fainter, the alarmed neighbors procured the assistance of a bailiff, and

burst open the door. Ghastly, indeed, was the spectacle which presented itself. There lay the young woman on the floor, weltering in her blood—a knife, the instrument of her death, beside her. To the question whether her father had been the cause of her sad condition, she was just able to make a faint affirmative gesture, and expired. At this moment the father reappeared. His horror may be imagined; every eye was fixed on him, and some specks of blood upon his shirt-sleeves seemed to confirm strongly the dreadful accusation which his daughter's dying gesture had too clearly intimated. Vainly attempting to account for the stained sleeve by the rupture of some swathe with which he had bound his wrist, he was hurried before a magistrate, and, upon the depositions of all the parties, committed to prison upon suspicion. He was shortly after brought to trial, when, in his defense, he acknowledged his having confined his daughter to prevent her intercourse with Lawson, the young man to whom he objected; and that he had quarreled with her on the subject the evening she was found murdered, as the witness Morrison had deposed; but he averred that he left his daughter unharmed and untouched, and that the blood found upon his shirt was there in conse-

quence of his having bled himself some days before, and the bandage becoming untied. These assertions did not weigh a feather with the jury when opposed to the strong circumstantial evidence of the daughter's expressions of "barbarity, cruelty, death," together with that apparently affirmative motion of her head, and of the blood so, as it seemed, providentially discovered on the father's shirt. On these severally concurring circumstances was William Shaw found guilty and executed.

After this unfortunate man had swung for weeks upon his gibbet—for he was gibbeted in chains, exposed to the four winds of heaven and the gaze of every passer-by—it was shown, beyond the possibility of donbt, that he was not merely guiltless, but that he had fallen a sacrifice to his regard for her whom he was accused of having murdered. The incoming tenant who succeeded Shaw, while rummaging in the chamber where Catherine Shaw died, discovered in a cavity on one side of the chimney, where it appeared to have fallen, a paper written by the wayward girl, announcing her intention of committing suicide, and ending with the words, "My inhuman father is the cause of my death;" thus explaining her expiring gesture. This document being shown, the handwriting was

recognized and avowed to be Catherine's by many of her relatives and friends. It became the public talk, and the magistracy of Edinburgh, on a scrutiny, being convinced of its authenticity, ordered the body of William Shaw to be given to his relatives for interment. Willing to make some reparation to his memory, and to show some sympathy with the feelings of his relatives, they caused a pair of colors to be waved over his grave. It was all the compensation they could award.

XVI.

Case of De Moulin.

JAQUES DU MOULIN, a French refugee, having brought over his family and a small sum of money, employed it in purchasing lots of goods that had been condemned at the custom-house, which he again disposed of by retail. As these goods were such as, having a high duty, were frequently smuggled, those who dealt in this way were generally suspected of increasing their stock by illicit means, and smuggling, or purchasing smuggled goods, under color of dealing only in goods that had been legally seized by the king's officers, and taken from smugglers. This trade, however, did not, in the general estimation, impeach his honesty, though it gave no sanction to his character; but he was often detected in uttering false gold. He came frequently to persons of whom he had received money, with several of these pieces of counterfeit coin, and pretended that they were among the pieces which had been paid him; this was generally denied with great eagerness, but, if particular circumstances did not confirm the contrary, he was always peremptory

and obstinate in his charge. This soon brought him into disrepute, and he gradually lost not only his business, but his credit. It happened that, having sold a parcel of goods, which amounted to seventy-eight pounds, to one Harris, a person with whom he had before had no dealings, he received the money in guineas and Portugal gold, several pieces of which he scrupled; but the man having assured him that he himself had carefully examined and weighed those very pieces, and found them good, Du Moulin took them, and gave his receipt.

In a few days he returned with six pieces, which he averred were of base metal, and part of the sum which he had a few days before received of him for the lot of goods. Harris examined the pieces, and told Du Moulin that he was sure there were none of them among those which he had paid him, and refused to exchange them for others. Du Moulin as peremptorily insisted on the contrary, alleging that he had put the money in a drawer by itself, and locked it up till he offered it in payment of a bill of exchange, and then the pieces were found to be bad, insisting that they were the same to which he had objected. The man now became angry, and charged Du Moulin with intending a fraud. Du Moulin appeared to be rather piqued

than intimidated at this charge; and having sworn that these were the pieces he received of Harris, Harris was at length obliged to make them good; but as he was confident Du Moulin had injured him by a fraud, supported by perjury, he told his story wherever he went, exclaiming against him with great bitterness, and met with many persons who made nearly the same complaints, and told him that it had been a practice of Du Moulin's for a considerable time. Du Moulin now found himself universally shunned; and hearing what Harris had reported from all parts, he brought his action for defamatory words, and Harris, irritated to the highest degree, stood upon his defense; and, in the mean time, having procured a meeting of several persons who had suffered the same way in their dealings with Du Moulin, they procured a warrant against him, and he was apprehended upon suspicion of counterfeiting the coin. Upon searching his drawers, a great number of pieces of counterfeit gold were found in a drawer by themselves, and several others were picked from other money, that was found in different parcels in his scrutoire; upon further search, a flask, several files, a pair of moulds, some powdered chalk, a small quantity of aqua regia, and several other implements, were discovered. No

doubt could now be made of his guilt, which was extremely aggravated by the methods he had taken to dispose of the money he made, the insolence with which he had insisted upon its being paid him by others, and the perjury by which he had supported his claim. His action against Harris for defamation was also considered as greatly increasing his guilt, and everybody was impatient to see him punished. In these circumstances he was brought to his trial, and his many attempts to put off bad money, the quantity found by itself in his scrutoire, and, above all, the instruments of coining, which, upon a comparison, exactly answered the money in his possession, being proved, he was upon this evidence convicted, and received sentence of death.

It happened that a few days before he was to have been executed, one Williams, who had been bred a seal engraver, but had left his business, was killed by a fall from his horse; his wife who was then big with child, and near her time, immediately fell into fits, and miscarried. She was soon sensible that she could not live, and therefore sending for the wife of Du Moulin, she desired to be left alone, and gave her the following account:

That her husband was one of four, whom she named, that had for many years subsisted by coun-

terfeiting gold coin, which she had been frequently employed to put off, and was therefore intrusted with the whole secret; that another of these persons had hired himself to Du Moulin as a kind of footman and porter, and being provided by the gang with false keys, had disposed of a very considerable sum of bad money, by opening his master's scrutoire, and leaving it there in the stead of an equal number of good pieces, which he took out; that by this iniquitous practice, Du Moulin had been defrauded of his business, his credit, and his liberty, to which in a short time his life would be added, if application was not immediately made to save him. By this account, which she gave in great agonies of mind, she was much exhausted, and having given directions where to find the persons whom she impeached, she fell into convulsions, and soon after expired. The woman immediately applied to a magistrate, and having related the story she had heard, procured a warrant against the three men, who were taken the same day, and separately examined. Du Moulin's servant steadily denied the whole charge, and so did one of the other two; but while the last was examining, a messenger who had been sent to search their lodgings, arrived with a great quantity of bad money, and many instru-

ments for coining. This threw him into confusion, and the magistrate, improving the opportunity by offering him his life if he would become an evidence for the king, he confessed that he had been long associated with the other prisoners and the man that was dead, and he directed where other tools and money might be found, but he could say nothing as to the manner in which Du Moulin's servant was employed to put it off. Upon this discovery, Du Moulin's execution was suspended; and the king's witness swearing positively that his servant and the other prisoner had frequently coined in his presence, and giving a particular account of the process, and the part which each of them usually performed, they were convicted, and condemned to die. Both of them, however, still denied the fact, and the public were still in doubt about Du Moulin. In his defense, he had declared that the bad money which was found together was such as he could not trace to the persons of whom he had received it; that the parcels with which bad money was found mixed, he kept separate, that he might know to whom to apply if it should appear to be bad; but the finding of the moulds and other instruments in his custody was a particular not yet accounted for, as he only alleged

in general terms that he knew not how they came there, and it was doubted whether the impeachment of others had not been managed with a view to save him who was equally guilty, there being no evidence of his servant's treachery but that of a woman who was dead, reported at second hand by the wife of Du Moulin, who was manifestly an interested party. He was not, however, charged by either of the convicts as an accomplice, a particular which was strongly urged by his friends in his behalf; but it happened that while the public opinion was thus held in suspense, a private drawer was discovered in a chest that belonged to his servant, and in it a bunch of keys, and the impression of one in wax; the impression was compared with the keys, and that which it corresponded with was found to open Du Moulin's scrutoire, in which the bad money and implements had been found. When this particular, so strong and unexpected, was urged, and the key produced, he burst into tears, and confessed all that had been alleged against him. He was then asked how the tools came into his master's scrutoire; and he answered, that when the officers of justice came to seize his master, he was terrified for himself, knowing that he had in his chest these instru-

ments, which the private drawer would not contain, and fearing that he might be included in the warrant, his consciousness of guilt kept him in continual dread and suspicion; that for this reason, before the officers went up stairs, he opened the scrutoire with his false key, and having fetched his tools from his box in the garret, he deposited them there, and had just locked it when he heard them at the door.

In this case, even the positive evidence of Du Moulin, that the money he brought back to Harris was the same he had received of him, was not true, though Du Moulin was not guilty of perjury, either willfully or by neglect, inattention or forgetfulness. And the circumstantial evidence against him, however strong, would only have heaped one injury upon another, and have taken away the life of an unhappy wretch, from whom a perfidious servant had taken everything else.

XVII.

Case of the Schmidts.

In the town of M———, in Germany, resided a goldsmith, named Christopher Ruprecht, aged upwards of sixty; rich, illiterate, quarrelsome, covetous; rude in speech, vulgar in his habits; whose chief indulgence consisted in frequenting low alehouses, and mingling in such haunts with the most disreputable among the lower classes of his fellow citizens. His selfishness and repulsive manners had alienated from him all his relations, with the exception of a sister, who resided with him, and a married daughter, who still continued, notwithstanding his peculiarities of temper, to visit him regularly, though as much from interest perhaps as affection.

The favorite resort of Ruprecht was a small alehouse of the meanest order, situated at the end of a dark winding lane, and receiving as a title, from its gloomy situation, and the orgies of which it was the scene, the emphatic monosyllable usually applied to the place of darkness. About half-past eight o'clock, on the evening of the 7th of Febru-

ary, 1817, the goldsmith repaired to this place according to his custom, took his seat among the circle which generally assembled round the inn fire on the first floor, and in his usual overbearing style, joined in the current conversation. In this manner the time was spent till past ten o'clock, when Ruprecht despatched the landlord to the ground floor for a further supply of beer. As the master of the house was reascending the stairs to the company with the liquor wanted, a voice from the passage or outer door below, was heard inquiring if Ruprecht was above; and on the landlord replying—without turning his head—in the affirmative, he was desired by the person below to tell the goldsmith to come down. On receiving the message, Ruprecht rose immediately, and left the room. A minute had scarcely elapsed afterwards, when the company heard distinctly a loud groaning from below stairs, followed by a sound as of a heavy body falling in the passage. All present, to the number of eleven, hurried down stairs, where they found the goldsmith lying near the house door, still alive, but covered with blood flowing from a large wound on his head. At a little distance lay his leather cap, which had been cut through by the blow. The only words which the

wounded man uttered, when lifted up, were: "The villain—the villain with the axe!" and once afterwards, "My daughter, my daughter!" She was immediately sent for, but his mind apparently wandered, and he did not recognize her.

No trace of the author of the deed, or of any weapon, was visible in the neighborhood. On examination, the wound was found to be about four inches long, extending along the left side of the head from front to back, and deeper in the center than at the ends. From the force required to inflict such a blow, it was obvious that it must have been done outside the door, as the passage within was so low, that no weapon could have been raised sufficiently high to produce such an injury. After receiving it, the goldsmith must have been able to stagger into the passage before falling. On the left side of the door without, was a stone seat, two feet high, on which, it was supposed, the murderer must have taken his stand, awaiting his victim, and directed, from this position, the deadly stroke. Though Ruprecht's words implied that the weapon had been an axe, the medical inspector was of opinion that a saber, wielded by an experienced hand, was more likely to have been the instrument. The main hope of

explaining this point, and of discovering the author of the deed, rested on the revelations which the goldsmith himself might be able to make. It was not, however, till the evening of the following day, that he appeared sufficiently in his senses to warrant the judge in commencing his examination. The wounded man's answers were given in monosyllables. He was asked:

"Who struck you?"

"Schmidt."

"What is this Schmidt—where does he reside?"

"In the Most." (The Most is a street of the town.)

"With what did he strike you?"

"A hatchet."

"How did you know him?"

"By his voice."

"Was he indebted to you?" Ruprecht shook his head.

"What was his motive?"

"A quarrel."

The wounded man was so much exhausted by these responses, that scarcely any other questions could be put to him, excepting the request, that he would again name the individual who had struck him. His repeated answer was, "Schmidt—woodcutter."

Who, then, was this Schmidt?—a name, it is to be observed, not less common in Germany than Smith is in England. It turned out that there were three Schmidts, woodcutters, in the town, two of whom were brothers, and lived in the Most, the street indicated by the goldsmith; while the third, Christopher Schmidt, lived in the street called the Hohen Pflaster. The brothers were usually named from their different heights, the Great Schmidt and the Little Schmidt, and they proved to be old acquaintances of Ruprecht, but to have recently ceased to be on familiar terms with him, chiefly because the Great Schmidt had given evidence against him in an action of damages. Regarding Christopher Schmidt, it was ascertained that, at a former period of his life, he had been imprisoned under a charge of accession to a robbery. Before proceeding to the arrest of any of these individuals, Ruprecht, whose skull had in the interval been trepanned, in order to raise the depressed bone, was again asked, at a favorable moment, a string of questions similar to the former, and gave the same responses, excepting in one important point. On being asked whether the Great or the Little Schmidt was the guilty person, he tried to speak, but failed. He was then asked if

the Most was the street, but was silent. To the next question, "If the Hohen Pflaster was the man's residence?" he answered with difficulty, but distinctly, "Yes," and then relapsed into the state of insensibility which was common to him.

All three Schmidts being thus implicated in suspicion, they were taken into custody, for the purpose, in the first place, of being confronted with the wounded man, and to have the guilty individual, if possible, identified by him. But Ruprecht, though sensible, was unable to open his eyes, and the main object of the interview was thus defeated. The behavior of the suspected persons was, however, so very different, as to excite the strongest hopes that the matter would be cleared up. The brothers Schmidt were calm and composed on being brought into the goldsmith's presence; they spoke to him, called him by name, and expressed the greatest sympathy for his situation. Christopher Schmidt, on the contrary, was agitated and restless; when asked if he knew the person in bed, he first said he did not know him, and then that he did know him; first, that he remained in his mother-in-law's house on the night of the murder till eleven, and afterwards, that he was in his own house in bed at nine. He at the

same time protested his entire innocence, and appealed to the testimony of his wife, his mother-in-law, and his neighbors. His agitation and contradictions drew the suspicion of all from the other Schmidts upon him, and he was committed by the judge to prison. All hope of further information from the victim himself, was put an end to by his death on the following day, the second from the accident.

Subsequent investigations tended to increase the suspicions against Christopher Schmidt, which his behavior on the first occasion had awakened. On inspecting his house, the handle of his axe, near the blade, was found to be streaked with blood! The truth of the report as to his former imprisonment he did not attempt to deny, but alleged that he had been merely made the innocent instrument of conveying stolen property from one place to another. On undergoing another examination, his contradictions were even more glaring than before. To the question, "How he came to know Ruprecht in bed, when he stated that he had never seen him before," he said that he knew him from having heard of his accident, and from being aware of the object of his own visit to the goldsmith's house. He stated that he had been with his wife and child

to his mother-in-law's house, where they wrought at some in-door work, to save candles at home. It was impossible to ascertain from his answers the time at which he had come from his mother-in-law's house to his own. He first averred that he had come home with his child at nine, and that his wife had come an hour after him; then, that his wife had returned with him at ten o'clock; then that he was asleep, and did not know when she came; and made fresh contradictions, in short, with regard to time, at every query put to him. All these things—his variations, his agitation, his downcast and suspicious look, his previous imprisonment, the spots upon his axe, the expression of the dying man, which pointed most strongly to him—when taken together, formed a strong combination of circumstances against Christopher Schmidt. Indeed, his guilt was scarcely doubted of by any one.

On the other hand, after men's minds became capable of calmer reflection on the subject, the very grossness of these contradictions seemed to lead to the inference, that they arose from a deficiency of intellect, or from a mind disordered by temporary anxiety and fear, or from both causes, rather than from a desire to conceal the truth. The report of

the neighbors, when their evidence was collected, corroborated this conjecture; his stolidity and dullness of intellect was such as to have acquired for him the common nickname of "The Sheep." He never was capable, it was found, of expressing himself clearly, and it followed that, under such circumstances as a charge of murder, this deficiency must evidently have been greatly aggravated. From such a character as this, the statement, illogical as it was, that he knew Ruprecht in bed from having heard of his accident, was natural enough. With regard to the contradictory representations regarding the hour of his return, the inconsistency might be in part explained away by supposing his wife to have first gone home with him, seen him to bed with the child, and afterwards to have returned to her mother's for a short period before she finally came to sleep in her own house. This was, in fact, substantially proved by subsequent investigations of Schmidt's mother-in-law and wife. They, with other witnesses, proved that the wife, having seen her husband home, went back to her mother's to finish some work, and after an hour or an hour and a half's stay, returned to her own domicile. It was remarkable, however, that these two witnesses differed considerably with

respect to the hours at which these events took place. These discrepancies were held to arise from the fact, that the night in question was a long and dark one in February, and that no clocks were within reach of the parties. This gave a favorable color also to Schmidt's own inconsistencies as to time, particularly when taken in connection with the man's unquestionable stupidity.

But—admitting the wife's statement to be correct—Christopher Schmidt was left alone for an hour and a half at the very time the deed was commcommitted. The ale-house where it took place, however, was a mile and a quarter from Schmidt's dwelling; and to have been the actor in the deed, he must have sprung from bed at the moment of his wife's departure, hurried to the spot, committed the murder, and then been in bed a quarter of an hour afterwards. Was this energetic villainy likely to have been exhibited by one so slow and sluggish in intellect and behavior as Schmidt was proved to be? The thing was felt by all, on reflection, to be barely possible.

But, again, the blood on the handle of the axe? The accused, on being questioned respecting this, said, that if such stains existed, of which he knew nothing, they must have proceeded from a swell-

ing in the hand—which he showed—that had burst some days before. The swelling, it was replied, is in the *right* hand, while the stains are upon the upper of the handle, which is always held in the *left* hand. "I am *left-handed*," said the accused; and on inquiry among his associates, it was found to be the case. Further examination, also, showed that the axe of Schmidt could not have been the instrument of death, the wound in the head being four inches long, while the axe's blade was barely three inches. A strong additional testimony in Schmidt's favor, was the discovery that he had actually been free of all guilt, as he had represented, on the occasion of his former imprisonment, and that his general character everywhere was that of a sober, industrious, peaceable man.

Thus, one by one, the grounds of suspicion which had at first appeared to be assuming so firm and compact a form, crumbled away, and, though not yet finally liberated, it was apparent to all that Christopher Schmidt would be acquitted. But, as the clouds of suspicion passed from Christopher, they gathered for a time round the heads of his namesakes, the Great and Little Schmidts of the Most. These men, it was recollected, knew

Ruprecht, which Christopher did not; they had, moreover, been actually placed in an inimical position with respect to the deceased. They had borne evidence against him, in an action instituted by two respectable surveyors, whose names the goldsmith had publicly vilified. Ruprecht had lost the cause, and had been sentenced to a short confinement on bread and water. At his liberation, he had set on foot an action of retaliation against the surveyors, which was still undecided at the time of the murder. Could the surveyors have made use of their former witnesses, the Schmidts, to rid themselves of their pertinacious opponent? The high character of the men rendered this supposition improbable; and after it had lived for but a short time on the public breath, it was completely extinguished by the coming forward of several witnesses, who spoke to the fact of the brothers Schmidt having come home early on the night of the goldsmith's death, and not having left the house till next morning.

While all grounds for suspicion to rest upon were thus disappearing as far as the parties first implicated were concerned, some new discoveries, or rather conjectures, were made, which drew the eyes of justice to an entirely different quarter.

Two other Schmidts, woodcutters also, were found out, not living in the town indeed, but in the suburbs. One of these men was woodman to Berenger, Ruprecht's son-in-law, and this circumstance seems to have originated a new train of thinking in the minds of the official persons of the town, though no ground of suspicion could be found against the newly discovered Schmidts. One of Ruprecht's first expressions, it will be remembered, after receiving the blow, was, "My daughter! my daughter!" These words had been naturally interpreted at the time into an expression of anxiety to see her, but circumstances subsequently emerging, seemed to render it doubtful whether his exclamation did not bear a less favorable meaning. The matrimonial life of Berenger and his wife had long been, it appeared, an unhappy one; Berenger had often made complaints against his wife to her father. Recently, some steps taken by the husband had ended in making the wedded pair's life a little more harmonious, but they had, at the same time, exasperated Ruprecht's mind in the highest degree against Berenger. A short time before his death, the goldsmith had been heard to call his son-in law a villain; and he had also for some time past entertained the resolution of making a will,

leaving all to his daughter, and beyond her husband's control. This resolve he had announced to his daughter, about two months before his death, and also to his apprentice, Hogner. Nay, within a few hours of his accident, he had sent for Hogner to assist in arranging his papers, preparatory to the execution of the will on the following Sunday. This intention he had expressed in the hearing of of the maid servant. These remarkable circumstances directed the attention of justice to Berenger, who might have heard of the old man's determination; and a sufficient motive for a desire on his part to get rid quickly of the goldsmith would thus have been established.

Berenger, according to account, showed no emotion or sympathy on hearing of the accident, and his wife, it was said, showed also a want of feeling. One of her first concerns was to see whether her father had his keys about him; and having ascertained that he had, she took possession of and walked away with them. She had, besides, shown a strong anxiety to criminate one of the Schmidts, reporting several speeches against him, from her father's lips, which no one else had heard. Several other minor incidents seemed to bear against the Berengers. In interpreting her father's dying words

with this view, it was thought that the old man, feeling himself struck with what he conceived to be an axe, would immediately revert in his mind to the woodcutters, the Schmidts, who had borne a part against him in the suit then pending, and which occupied at the time much of his attention. This was the sense now put upon the goldsmith's mention of the name of Schmidt.

Here also, however, as in the former cases, the grounds of suspicion vanished, one by one, into thin air. That the words "my daughter" bore no meaning unfavorable to the Berengers, was proved by the statement of Ruprecht's sister, that such was her brother's common expression when anything troubled him; it was also proved, on better inquiry, that Berenger's wife had shown deep feeling for her father, and had only taken away his keys on the surgeon suggesting that the murder might be a prelimary to robbery; it was, however, sworn by the wife, the apprentice, and the maid servant, that they had never spoken of the will—a thing, indeed, most unlikely for the wife to do, when she alone was to to be benefited by it; and, finally, there was distinct evidence that Berenger himself, at least, had not been the murderer, as, at the time of it, he was quietly seated in the parlor of the Golden Fish. By

this and other evidence, the suspicion against the Berengers fell to peices.

Even after all these failures, the investigation was not abandoned. A soldier, who was indebted to Ruprecht, and who had been threatened by him, on the day of the accident, with hard measures, was the person next brought under examination. After the fabric of evidence in this case also had gathered strength, it was at once overturned by a clear proof of an alibi.

Here, at last, justice was obliged to give up the pursuit; nor has any light since been thrown on this strange story.

XVIII.

Case of Mistaken Medical Testimony.

THE following narrative, while it strikingly exhibits the fallible and uncertain nature of circumstantial evidence, affords also a convincing proof of the indispensable necessity of procuring medical testimony of the highest order, in all criminal cases relating to injuries of the person. The narrator, Mr. Perfect, a surgeon at Hammersmith, sent the statement to the editor of the *Lancet* (Mr. Wakley) in January, 1839:—

"It is now thirty years ago, that accidentally passing the Packhorse, Turnham Green, my attention was attracted by a mob of persons of the lowest order assembled around the door of that inn, who were very loud in their execrations against some person who was suspected of having murdered his brother; in corroboration of which, I was told that his bones were found near the premises where he formerly resided, upon view of which a jury was then sitting, after an adjournment from the day preceding. I found that two surgeons had

been supœnaed to inspect the remains, and I had no doubt but that every information as to their character had been obtained; curiosity alone, therefore, induced me to make way into the room, where I found that the coroner, and, I believe, a *double jury*, were sitting for the second day, and were engaged in an investigation which tended to show that a farmer and market gardner at Suttoncourt Farm, had, a few years before, a brother living with him, who was engaged in the farm, but whose conduct was dissolute and irregular to a degree that often provoked the anger of his elder brother, and sometimes begat strife and violence between them; that the temper of the elder brother was as little under control as the conduct of the younger; and, in fine, that they lived very uncomfortably together.

"One winter night, when the ground was covered with snow, the younger brother absconded from the house (for they both lived together), by letting himself down from his chamber window; and when he was missed the ensuing morning, his footsteps were clearly tracked in the snow to a considerable distance, nor were there any other footsteps *but his own*. Time passed on, and after a lapse of some few years no tidings were heard of his retreat, nor per-

haps have there ever been since. Some alterations in the grounds surrounding the house having been undertaken by a subsequent tenant (for the elder brother had then left the farm), a skeleton was dug up, and the circumstance appeared so conclusive that one brother had murdered the other, that the popular clamor was raised to the utmost, and a jury impanneled to investigate the case.

"After listening attentively to these details, I ventured to request of the coroner to be allowed to examine the bones, which I found were contained in a hamper basket at the further end of the room, and I felt much flattered by his immediate compliance, for he desired the parish beadle, who was in attendance, to place them upon the table; and having himself disposed them in their natural order, I found that they represented a person of short statute, and from the obliteration of the sutures of the skull, and the worn-down state of the teeth, must have belonged to an aged person. But what was my surprise when I reconstructed the bones of the skeleton, and found the lower bones of the trunk to be those of a female. I immediately communicated the fact to the jury, and requested that the two medical men who had before given their opinions might be sent for, one

of whom attended, and without a moment's hesitation corroborated my report.

"I need not add that the proceedings were instantly at an end, and an innocent man received the *amende honorable*, in the shape of an apology, from all present, in which the coroner heartily joined. It has since been proved beyond all doubt that the spot where the bones were found was formerly the site of a large gravel pit, in which hordes of gipsies not only assembled, but occasionally buried their dead, and perhaps more skeletons are yet to be found in that vicinity."

XIX.

Case of James Baxwell.

In the year 1841, at Gibraltar, there occurred one of those extraordinary cases, which show us how ineffectively the romancist, even when his imagination is strained to the uttermost, can portray the extremes of passion of which human nature is susceptible. A communication, bearing date Feberuary 20th, from the rock-built fortress which England keeps as a key to the Mediterranean, relates the following particulars:

A respectable merchant, named James Baxwell, born at London, had removed in early life to Gibraltar, induced partly by the circumstance of his being of the same religious persuasion to which the people of his adopted country belonged. For many years he occupied a small dwelling near the base of Mount St. Michael, so renowned for its caves and crystallizations. He carried on a successful traffic in all the articles of British manufacture introduced into Spain. He acquired, in truth, a very considereble fortune in this way. All the country knew that he had a large amount of treasure lying by him, not to speak of the capital belonging to him, which was embarked in

commerce. His name was one of credit in all the principal houses of exchange in Europe.

James Baxwell had a daughter, an only daughter, aged seventeen, and of remarkable beauty. Her countenance and figure combined in a most agreeable manner the peculiar charms of the Englishman with the soft and languishing characteristics of the Spaniard. Young as she was, she had been for some two or three years an object of devoted admiration to all the youths around Gibraltar. At church they devoured her with their eyes; and many, many a one thought to himself that happy above all men would be he who could win the smiles of Elezia Baxwell. But Elezia bestowed her smiles upon no one. She seemed, to those whose involuntary sighs she excited, to carry maidenly modesty to freezing coldness. At mass, *her* eyes were ever bent upon her book, regardless of all the glances cast upon her by others.

Such was, at least, the case, till shortly before the events to be narrated. At length, however, Elezia did see one who awakened in herself some of the emotions which she had caused in others. At mass, one day, she observed the eyes of a young stranger fixed upon her with an expression of admiration and respect. To her he seemed a being superior to all

the young men she had ever yet beheld. From that moment, her calm and self-possessed demeanor left her for ever. Abroad and at home, she was restless and uneasy. But, ere long, the stranger found an opportunity of being introduced to her, and mutual avowals of love followed at no great distance of time.

Assured of the affections of Elezia, the young stranger then presented himself to Mr. Baxwell. "I am named William Katt," said he to the merchant; "I am, like yourself, an Englishman; I am of respectable family and character, young, and wealthy. Give me your daughter — we love one another."

"Never!" said James Baxwell, to whom the position and circumstances of the young man were not unknown; "never! You belong to the denominant religion of England, by which my fathers suffered so much and so long. You are a Lutheran and my daughter is a Catholic. Such a union could not be happy; nor will I ever give my consent to it. Elezia shall never be yours!" The daughter, informed of this declaration, threw herself at the feet of her father, and endeavored to move him from his purpose. Her lover did the same. But the father remained obstinate, and a violent scene took place

between Elezia and her parent. The blood of the fiery South coursed in the daughter's veins, and she declared that she *would* marry the object of her choice, despite of all opposition. James Baxwell, on the other hand, declared that he would sooner kill her with his own hands, than see her carry such a resolution into effect. As to William Katt, who stood by at this scene, he kept silence. What thoughts were revolving in his mind, it would be difficult to say.

Two days afterwards, an alarming noise was heard by the neighbors to issue from a cave immediately adjoining the merchant's house, and used by him for some domestic purposes. The noise consisted at first of loud cries, which gradually became fainter, and at length died altogether away. The auditors looked at each other with amazement, and many were the conjectures as to the cause of the sounds alluded to. A solution of the mystery was not long in suggesting itself. Elezia had disappeared; she was no longer to be seen about her father's house. After many low murmurs had circulated, the father was interrogated respecting his daughter. He said that she was missing, certainly; but whither she had gone, he knew not. He had nothing whatever to do, he said, with her disappearance.

This explanation was not satisfactory. The whisper went abroad that James Baxwell had assassinated his daughter, to prevent her marriage with William Katt, and, ultimately, this conjecture was so forcibly pressed on the attention of the public authorities, that they were compelled to arrest James Baxwell, and inquire into the matter. The dwelling of the merchant was examined, but nothing criminatory was found. "The cave! the cave is the place!" cried some of the crowd. The magistrates then descended into the cave, and there, on lifting some loose stones, they found a portion of Elezia's dress, sprinkled all over with blood. They also discovered a small quantity of hair, clotted with gore, and that hair was recognized by many as having been taken from the head of Elezia.

Baxwell protested his innocence. But the proof seemed strong against him, and he was regularly brought to trial. The result was his conviction for the murder of his daughter, and his condemnation to death.

On receiving sentence, the unhappy merchant trembled to excess, and afterwards seemed utterly overpowered by the dreadful nature of his situation. He continued in a state almost of total insensibility during the interval between his trial and the day

appointed for his execution. On the morning of the latter day, the jailer came to announce to him, for the final time, that the moment was at hand. The merchant was seized again with a fearful trembling, and he cried, what he had reiterated to all who saw him in his confinement: "Before my Maker, I swear that I am guiltless of my child's death!"

They led him out to the scaffold. There he found, among others, William Katt, who, it should have been said, was the most important witness against him at his trial, having repeated to the court the threat of assassination which had been uttered by James Baxwell in his presence against Elezia. No sooner did the doomed merchant behold Katt, than he exclaimed, at the very foot of the scaffold: "My friend, in one minute I shall be in eternity. I wish to die in peace with all men. Give me your hand—I pardon you freely for the injury your evidence has done to me." Baxwell said this with some composure, but the effect of his words upon Katt were very striking. He became pale as death, and could not conceal the depth of his agitation.

Baxwell mounted the steps of the gallows slowly, and gave himself up to the hands of the executioner, to undergo death by the rope. According to the ancient custom of Gibraltar, the executioner com-

menced his last duties by crying in a loud voice: "Justice is doing! Justice is done!" He then placed the black bonnet on the head of the condemned merchant, and pulled it down in front, so as to cover the eyes. He had just done this, when he was stopped in his proceedings by a loud cry from the side of the scaffold: "*It is I who am guilty—I alone!*"

This cry came from William Katt. The magistrates in attendance instantly called him forward, and demanded an explanation. The young man avowed that he had carried off Elezia, with her consent, to be his wife, and that she was now residing not far off, in concealment. But to her he did not communicate other measures which he had taken, chiefly to revenge himself for the scorn of her father. He had contrived to cut off a portion of her hair while she slept. He had clotted it with the blood of a lamb, and had also sprinkled in the same way a part of Elezia's dress, which he had purloined. These articles he had placed in the cave, and there, also, had he emitted personally those cries which had borne so heavily against the merchant. The generous pardon which the merchant had bestowed on him at the scaffold, had awakened (the young man said) instantaneous remorse in his breast, and compelled him to avow the truth.

This confession was partly made at the scaffold, and partly afterwards. As soon as Katt had spoken out decisively, the executioner had turned to James Baxwell, to take from him the insignia of death. The merchant, almost unobserved, had sunk down into a sitting posture. The black bonnet was drawn by the executioner from off his eyes and head. It was found that he was a corpse! No exertions had the slightest effect in awakening in him the spark of life. The physicians, saying all they could on such a subject, declared that he had died from the effects of strong imagination.

William Katt was conducted to prison amid the clamors of the populace, there to await judgment for his misdeeds.

Elezia, the unhappy daughter of an unhappy father, retired to a convent for life immediately on learning all that had passed.

XX.

Case of John Miles.

WILLIAM RIDLEY kept the Red Cow, a public house at Exeter. John Miles was an old acquaintance of Ridley's, but they had not seen each other for some time (Miles living some distance off), when they met one morning, as the latter was going a little way to receive some money. They adjourned to the next public house, and, after drinking together, Ridley told Miles that he must go about the business which brought him from home, which was to receive a sum of money, but made him promise to wait for his coming back. Ridley returned, and they drank together again. Ridley now insisted upon Miles' accompanying him home to dinner. They dined, they drank, they shook hands, repeated old stories, drank and shook hands again and again, as old acquaintances in the lower class, after long absences, usually do; in fine, they both got, at last, pretty much in liquor.

The room they sat in was backwards, detached as it were from the house, with a door that went immediately into a yard, and had communication with the street, without passing through the house.

As it grew late, Mrs. Ridley came into the room, and not seeing her husband there, made inquiry after him of Miles. Miles being much intoxicated, all that could be got out of him was, that Ridley went out into the yard some time before, and had not returned. Ridley was called, Ridley was searched after, by all the family; but neither answering, nor being to be met with, Miles, as well as he was able for intoxication, went his way.

Ridley not coming home that night, and some days passing without his returning, or being heard of, suspicions arose, in the mind of Mrs. Ridley, of some foul play against her husband on the part of Miles; and these were not a little increased on the recollection that her husband had received a sum of money that day, and that Miles had replied to her inquiries after him in a very incoherent, unintelligible manner, which, at the time, she had attributed to his being in liquor.

These suspicions went abroad, and at length a full belief took place in many, that Miles was actually the murderer of Ridley; had gone out with him, robbed and murdered him, disposed of the body, and slid back again to the room where they were drinking, unseen by any one.

The officers of justice were sent to take up Miles,

and he giving, before the magistrate, a very unsatisfactory relation of his parting with Ridley, which he affirmed was owing to his having been intoxicated when Ridley went out of the room from him, but which the magistrate ascribed to guiltiness, he was committed to Exeter jail for trial.

Whilst Miles was in confinement, a thousand reports were spread, tending to warp the minds of the people against him. Supernatural as well as natural reasons were alleged as proof of his guilt. Ridley's house was declared to be haunted; frequent knockings were heard in the dead of the night; two of the lodgers avowed they had seen the ghost. And to crown the whole, an old man, another lodger, positively affirmed, that once, at midnight, his curtains flew open, the ghost of Ridley appeared, all bloody, and, with a piteous look and hollow voice, declared he had been murdered, and that Miles was the murderer.

Under these prepossessions amongst the weak and superstitious, and a general prejudice even in the stronger minds, was John Miles brought to trial for the willful murder of William Ridley. Circumstances upon circumstances were deposed against him; and as it appeared that Miles was with Ridley the whole day, both before and after his receiving

the money, and that they spent the afternoon and evening together alone, the jury, who were neighbors of Ridley, found Miles guilty, notwithstanding his protestations, on his defense, of innocence, and he was shortly after executed at Exeter.

It happened, that, some time after, Mrs. Ridley left the Red Cow to keep another ale house, and the person who succeeded her, making several repairs in and about the house, in emptying the necessary, which was at the end of a long dark passage, the body of William Ridley was discovered. In his pockets were found twenty guineas, from whence it was evident he had not been murdered, as the robbing of him was the sole circumstance that could be and was ascribed to Miles for murdering of Ridley. The truth of Miles' assertions and defense now became doubly evident; for it was recollected that the floor of the necessary had been taken up the morning before the death of Ridley, and that, on one side of the seat, a couple of boards had been left up; so that, being much in liquor, he must have fallen into the vault, which was uncommonly deep; but which, unhappily, was not adverted to at the time of his disappearance!

XXI.

The Obstinate Juryman.

Two men were seen fighting together in a field. One of them was found, soon after, lying dead in that field. Near him lay a pitchfork which had apparently been the instrument of his death. This pitchfork was known to have belonged to the person who had been seen fighting with the deceased; and he was known to have taken it out with him that morning. Being apprehended and brought to trial, and these circumstances appearing in evidence, and also that there had been, for some time, an enmity between the parties, there was little doubt of the prisoner's being convicted, although he strongly persisted in his innocence; but, to the great surprise of the court, the jury, instead of bringing in an immediate verdict of guilty, withdrew, and, after staying out a considerable time, returned and informed the court, that eleven, out of the twelve, had been, from the first, for finding the prisoner guilty; but that one man would not concur in the verdict. Upon this, the judge observed to the dissentient person, the great strength of the circumstances, and asked him, "how it was possible, *all circumstances con-*

sidered, for him to have any doubts of the guilt of the accused?" But no arguments that could be urged, either by the court or the rest of the jury, could persuade him to find the prisoner guilty; so that the rest of the jury were at last obliged to agree to the verdict of acquittal.

This affair remained, for some time, mysterious; but it at length came out, either by the private acknowledgment of the obstinate juryman to the judge who tried the cause (who is said to have had the curiosity to inquire into the motives of his extraordinary pertinacity), or by his confession at the point of death (for the case is related both ways), that he himself had been the murderer! The accused had, indeed, had a scuffle with the deceased, as sworn on the trial, in which he had dropped his pitchfork, which had been, soon after, found by the juryman, between whom and the deceased an accidental quarrel had arisen in the same field; the deceased having continued there at work after the departure of the person with whom he had been seen to have the affray; in the heat of which quarrel, the juryman had unfortunately stabbed him with that very pitchfork, and had then got away totally unsuspected; but finding, soon after, that the other person had been apprehended, on suspicion of

being the murderer, and fearing, as the circumstances appeared so strong against him, that he should be convicted, although not guilty, he had contrived to get upon the jury, as the only way of saving the innocent without endangering himself.

XXII.

Case of John Harkins and George Simpson

JOHN HAWKINS and George Simpson were indicted for robbing the mail, on the 16th of April, 1722. Hawkins, in his defense, set up an *alibi*, to prove which, he called one William Fuller, who deposed, that Hawkins came to his house on Sunday, the 15th of April, and lay there that night, and did not go out until the next morning. Being asked by the court, "By what token do you remember that it was the 15th* of April?" he replied, "By a very good token, for he owed me a sum of money for horse hire, and on Tuesday, the 10th of April, he called upon me and paid me in full, and I gave him a receipt; and I very well remember, that he lay at my house the Sunday night following." The receipt was now produced. "April the 10th, 1722. Received of Mr. John Hawkins, the sum of one pound ten shillings, in full of all accounts, per me, William Fuller." Upon inspecting the receipt, the court asked Fuller who wrote it. He replied, "Hawkins wrote the body of it, and I signed it."

* The robbery was committed about two o'clock on the morning of the 16th.

Court. "Did you see him write it?"

Fuller. "Yes."

Court. "And how long was it after he wrote it, before you signed?"

Fuller. "I signed it immediately, without going from the table."

Court. "How many standishes do you keep in the house?"

Fuller. "Standishes?"

Court. "Aye, standishes: it is a plain question."

Fuller. "My Lord, but one; and that is enough for the little handwriting we have to do."

Court. "Then you signed the receipt with the same ink that Hawkins wrote the body of it with?"

Fuller. "For certain."

Court. "Officer, hand the receipt to the jury. Gentlemen, you will see that the body of the note is written with one kind of ink, and the name at the bottom with another very different; and yet this witness has sworn, that they were both written with the same ink, and one immediately after the other. You will judge what credit is to be given to his evidence!"

Thus, the authenticity of the receipt, and the credit of the witness, were overthrown by the

sagacity of the court! But while the judge, Lord Chief Baron MONTAGUE was summing up the evidence, he was interrupted by the following occurrence: The person who reports the trial was then taking notes of the proceedings; his ink, as it happened, was very bad, being thick at the bottom, and thin and waterish at the top, so that, accordingly as he dipped the pen, the writing appeared very pale or pretty black. This circumstance being remarked by some gentlemen present, they handed the book to the jury; the judge perceiving them very attentively inspecting it, called to them: "Gentlemen, what are you doing? What book is that?" They told him that it was the writer's book, and that they were observing how the same ink appeared pale in one place, and black in another. The judge then told them—"You ought not, gentlemen to take notice of any thing but what is produced in evidence"; and, turning to the writer, demanded—"what he meant by showing that book to the jury?" And being informed by the writer that it was taken from him, he inquired "who took it, and who handed it to the jury?" But this the writer could not say, as the gentlemen near him were all strangers to him, and he had not taken any particular notice of the person who took his book.

That a jury ought not to take notice of any thing but what is produced in evidence, has been said to be law; but, on the contrary, it has been held, and surely very properly, that a juryman may find from his own knowledge; indeed, what evidence can convince a person that *is* which he knows *not* to be?

Hawkins and Simpson were convicted and executed; indeed, the evidence against them was very strong; but, had the fate of Hawkins depended upon the single testimony of Fuller, he would, but for this occurrence, have fallen a sacrifice to the acuteness of the judge! who appears to have been much displeased at the accidental confutation of his remarks on the receipt, although it was an accident in favor of life; and, had it not been in a case where other evidence was so strong against the accused, it must have been looked upon as the special interposition of Providence.

XXIII.

A Man Wrongly Convicted of Parricide.

A MAN was tried for, and convicted of, the murder of his own father. The evidence against him was merely circumstantial, and the principal witness was his sister. She proved that her father possessed a small income, which, with his industry, enabled him to live with comfort; that her brother, the prisoner, who was his heir at law, had long expressed a great desire to come into the possession of his father's effects; and that he had long behaved in a very undutiful manner to him, wishing, as the witness believed, to put a period to his existence by uneasiness and vexation; that, on the evening the murder was committed, the deceased went a small distance from the house, to milk a cow he had for some time kept, and that the witness also went out to spend the evening and to sleep, leaving only her brother in the house; that, returning home early in the morning, and finding that her father and brother were absent, she was much alarmed, and sent for some neighbors to consult with them, and to receive advice what should be done; that, in company with

these neighbors, she went to the hovel in which her father was accustomed to milk the cow, where they found him murdered in an inhuman manner, his head being almost beat to pieces; that a suspicion immediately falling on her brother, and there being then some snow upon the ground, in which the footsteps of a human being, to and from the hovel, were observed, it was agreed to take one of the brother's shoes, and to measure therewith the impressions in the snow; this was done, and there did not remain a doubt but that the impressions were made with his shoes. Thus confirmed in their suspicions, they then immediately went to the prisoner's room, and after a diligent search, they found a hammer, in the corner of a private drawer, with several spots of blood upon it, and with a small splinter of bone, and some brains in a crack which they discovered in the handle. The circumstances of finding the deceased and the hammer, as described by the former witness, were fully proved by the neighbors whom she had called; and upon this evidence the prisoner was convicted and suffered death, but denied the fact to the last. About four years after, the witness was extremely ill, and understanding that there were no possible hopes of her recovery, she confessed that her father and brother having offended her, she was

determined they should both die; and, accordingly, when the former went to milk the cow, she followed him with her brother's hammer, and in his shoes; that she beat out her father's brains with the hammer, and laid it where it was afterwards found; that she then went from home to give a better color to this wicked business, and that her brother was perfectly innocent of the crime for which he had suffered. She was immediately taken into custody, but died before she could be brought to trial.

XXIV.

Case of Mistaken Medical Testimony.

JOHN STRINGER was tried at the Lent assizes, held at Kingston, in the county of Surry, in the year 1765, before the late Lord Chief Baron SMYTHE, for the murder of his wife, and found guilty. The trial being on the Saturday, he was ordered for execution on the Monday following. The case was thus: Stringer, a man in low circumstances, had brought his wife, who had long been in an ill state of health, from London to Lambeth, for the benefit of the air; here they lived for some time; generally in great harmony; but not without those little quarrels and scuffles, so common with persons in their rank of life. Upon the woman's death, some of the neighboring females, who had been occasionally witnesses to these litttle accidental bickerings between the husband and wife, took it in their heads that he had murdered her, notwithstanding she had never been heard to make the least complaint of her husband during the course of her illness; and the man was brought to trial in consequence.

Some trifling evidence being given of the little

differences that had arisen between them; and the opinion of a young surgeon, that some appearances on the corpse were somewhat the appearances of a mortification, occasioned by bruises; Stringer, on these slight circumstances, was convicted, and left for execution!

Mr. Carsan, a surgeon of great experience in the neighborhood, had, on the report of the murder, from mere curiosity, examined the body, and was so clear that there were no marks of violence thereon, that he had not the least apprehension of the possibility of Stringer's being convicted: but hearing of the conviction, and confident of the innocence of the unhappy man, and actuated by the love of justice and humanity, he instantly, on the Sunday, waited on, and represented the case to the Archbishop of Canterbury; his grace gave Mr. Carsan a letter to Baron SMYTHE, who, convinced by his statement of the matter, that himself and the jury had been too precipitate in forming an opinion of the guilt of Stringer, granted an immediate respite; which gave Mr. Carsan an opportunity of laying the whole case before his majesty, and he had the satisfaction of saving an innocent man from an undeserved and ignominious death.

XXV.

The Evidence of Torture.

In the year 1764, a citizen of Liege was found dead in his chamber, shot in the head. Close to him lay a discharged pistol, with which he had apparently been his own executioner. Firearms are the chief manufacture of that city; and so common is the use of pistols at that place, that every peasant, who brings his goods to the markets there, is seen armed with them; so that the circumstance of the pistol did not, at first, meet with so much attention as it might have done in places where those weapons are not in such common use. But, upon the researches of the proper officer of that city, whose duty, like that of our coroner, it is to inquire into all the circumstances of accidental deaths, it appeared that the ball which was found lodged in the head of the deceased could never, from its size, have been fired out of the pistol which lay by him; thus it was clear that he had been murdered; nor were they long in deciding who was the murderer. A girl, of about sixteen, the niece of the deceased, had been brought up by him, and he had been

always supposed to have intended to leave her his effects, which were something considerable; but the girl had then lately listened to the addresses of a young man whom the uncle did not approve of, and he had, upon that occasion, several times threatened to alter his will, and leave his fortune to some other of his relations. Upon these, and some other concurrent circumstances, such as having been heard to wish her uncle's death, &c., the girl was committed to prison.

The torturing a supposed criminal, in order to force confession, is certainly the most cruel and absurd idea that ever entered into the head of a legislator. This being observed by the writer of this narrative, who was then at Liege, to a magistrate of that place, on this very occasion, his defense was,—"We never condemn to the torture but upon circumstances on which you in England would convict; so that the innocent has really a better chance to escape here than with you." But, until it is proved that pain has a greater tendency to make a person speak truth than falsehood, this reasoning seems to have little weight.

This unhappy girl was, therefore, horridly and repeatedly tortured; but still persevering in asserting her innocence, she at last escaped with life;—if

it could be called an escape, when it was supposed she would never again enjoy health or limbs, from the effects of the torture.

The writer has since learned, that, some years afterwards, her innocence became manifest, by the confession of the real assassins, who, being sentenced to the wheel for other crimes, confessed themselves the authors of this of which the girl was suspected; and that, several pistols having been discharged at the deceased, they had, intending that it should appear a suicide, laid a pistol near him, without adverting that it was not the same by which he fell.

XXVI.

Case of Jonathan Bradford.

JONATHAN BRADFORD kept an inn, in Oxfordshire, on the London road to Oxford. He bore a very unexceptionable character. Mr. Hayes, a gentleman of fortune, being on his way to Oxford, on a visit to a relation, put up at Bradford's. He there joined company with two gentlemen, with whom he supped, and, in conversation, unguardedly mentioned that he had then about him a sum of money. In due time they retired to their respective chambers; the gentlemen to a two-bedded room, leaving, as is customary with many, a candle burning in the chimney corner. Some hours after they were in bed, one of the gentlemen, being awake, thought he heard a deep groan in an adjoining chamber; and this being repeated, he softly awaked his friend. They listened together, and the groans increasing, as of one dying and in pain, they both instantly arose, and proceeded silently to the door of the next chamber, whence they had heard the groans, and, the door being ajar, saw a light in the room. They entered, but it is impossible to paint their consternation, on

perceiving a person weltering in his blood in the bed, and a man standing over him with a dark lantern in one hand, and a knife in the other! The man seemed as petrified as themselves, but his terror carried with it all the terror of guilt. The gentlemen soon discovered that th murdered person was the stranger with whom they ıd that night supped, and that the man who was standing over him was their host. They seized Bradford directly, disarmed him of his knife, and charged him with being the murderer. He assumed, by this time, the air of innocence, positively denied the crime, and asserted that he came there with the same humane intentions as themselves; for that, hearing a noise, which was succeeded by a groaning, he got out of bed, struck a light, armed himself with a knife for his defense, and was but that minute entered the room before them. These assertions were of little avail; he was kept in close custody till the morning, and then taken before a neighboring justice of the peace. Bradford still denied the murder, but, nevertheless, with such apparent indications of guilt, that the justice hesitated not to make use of this most extraordinary expression, on writing out his mittimus: "Mr. Bradford, either you or myself committed this murder."

This extraordinary affair was the conversation of the whole country. Bradford was tried and condemned, over and over again, in every company. In the midst of all this predetermination, came on the assizes at Oxford. Bradford was brought to trial; he pleaded—not guilty. Nothing could be stronger than the evidence of the two gentlemen. They testified to the finding Mr. Hayes murdered in his bed; Bradford at the side of the body with a light and a knife; that knife, and the hand which held it, bloody; that, on their entering the room, he betrayed all the signs of a guilty man; and that, but a few moments preceding, they had heard the groans of the deceased.

Bradford's defense on his trial was the same as before the gentlemen: he had heard a noise; he suspected some villany was transacting; he struck a light; he snatched the knife, the only weapon near him, to defend himself; and the terrors he discovered were merely the terrors of humanity, the natural effects of innocence as well as guilt, on beholding such a horrid scene.

This defense, however, could not be considered but as weak, contrasted with the several powerful circumstances against him. Never was circumstantial evidence more strong! There was little need of

the prejudice of the county against the murderer to strengthen it; there was little need left of comment from the judge, in summing up the evidence; no room appeared for extenuation; and the jury brought in the prisoner guilty, even without going out of their box.

Bradford was executed shortly after, still declaring that he was not the murderer, nor privy to the murder of Mr. Hayes; but he died disbelieved by all.

Yet were these assertions not untrue! The murder was actually committed by Mr. Hayes' footman; who, immediately on stabbing his master, rifled his breeches of his money, gold watch, and snuff-box, and escaped back to his own room; which could have been, from the after circumstances, scarcely two seconds before Bradford's entering the unfortunate gentleman's chamber. The world owes this knowledge to a remorse of conscience in the footman (eighteen months after the execution of Bradford), on a bed of sickness. It was a death-bed repentance, and by that death the law lost its victim.

It is much to be wished that this account could close here, but it cannot! Bradford, though innocent, and not privy to the murder, was, nevertheless, the murderer in design: he had heard, as well as the

footman, what Mr. Hayes declared at supper, as to the having a sum of money about him; and he went to the chamber of the deceased with the same diabolical intentions as the servant. He was struck with amazement; he could not believe his senses; and, in turning back the bed-clothes, to assure himself of the fact, he, in his agitation, dropped his knife on the bleeding body, by which both his hands and the knife became bloody. These circumstances Bradford acknowledged to the clergyman who attended him after his sentence.

XXVII.

Case of Leavitt Alley.

THE most remarkable murder trial which Boston has seen since the famous Webster-Parkman case, was that which resulted in a verdict that Leavitt Alley was not guilty of the murder of Abijah Ellis. There is at many points a wonderful parallelism in the two trials. The victims were both men of wealth, and of strikingly similar habits; both were hard creditors, and the incentive alleged in each case was the inability of the murderer to meet a certain payment. The horrible circumstances attending the finding of Ellis's body—just after the mysterious shooting of Charles Lane, a wealthy merchant, in his own doorway—and the consequent excitement, equaled in intensity only by the discovery of the charred remains of Dr. Parkman, a score of years before, will serve to recall the salient features of the case.

Some workmen near the Cambridge gas works, discovered two barrels, containing the mutilated body, floating in the Charles river. They were packed with horse manure and shavings, and in one of the barrels was discovered a piece of brown paper

with the name of M. Schouler, a billiard manufacturer. Investigation proved that a teamster, Leavitt Alley, was in the habit of removing these shavings to his stable. Following the clew to the stable, it was found that a dry manure heap had been recently disturbed; blood was also found upon some boards near by.

It was proved that on the previous morning Alley had started from his stable with four barrels, and a teamster, in jumping from the wagon, had ascertained that two of them were heavy. Two of the barrels were not satisfactorily accounted for, while a man testified to seeing the team and barrels with a man strongly resembling Alley upon the mill-dam, where they were supposed to have been thrown into the river. Alley was owing Ellis some two hundred dollars, was in great need of money, and Ellis was known to have been searching for the suspected man on the night when the murder was probably committed. A new axe which Alley had purchased a short time before was missing, and its very existence was denied. In addition, blood stains were found upon the clothing worn by Alley, which were identified by experts as human gore; and a woman had heard strange noises, like the rolling of barrels, in the stable on the fatal night. Lastly, it was shown that Alley had

been abundantly provided with money after the death of Ellis.

The testimony for the government was entirely circumstantial. It was not claimed that any human eye saw, or human ear heard, the doing of the atrocious deed. The case had been carefully worked up and prepared by the best detective skill and professional ability that could be brought to bear upon it, and, as the facts already given were clearly brought out, the outlook for the prisoner was certainly a dark one as compared with the Webster trial, when the whole case turned upon the identification by a dentist of a gold plate. The stains of blood found in the prisoner's stable and on his clothing were submitted to chemical tests, by skillful experts, and then examined through a microscope, and pronounced by them to be not only human blood, but that of the murdered man. A physician testified, from an examination of the deceased's stomach, that he must have met his death between six and nine o'clock on the fatal evening; and altogether the case against Alley was about as strong a one as circumstantial evidence ever presents.

The prisoner's counsel, however, appeared to fully appreciate the situation, and developed an unexpected strength. To controvert the theory that Alley had committed the murder in a quarrel, they introduced

evidence from prominent citizens of New Hampshire that he had always been a quiet and peaceable man, with a reputation for honesty and integrity above reproach, in the face of which the commission of so horrible a crime seemed most unlikely. The prosecution had claimed that Alley was in debt to Ellis, and without money to meet an engagement which fell due at the time of the murder; but the defense clearly proved that the prisoner possessed considerable property in New Hampshire and had money in a bank.

A strong point against the accused had been the fact that, though he had not much ready money on hand just before the murder, immediately after it he had considerable in his possession. But the defense disposed of this by evidence that a loan of one hundred and twenty-five dollars was repaid by his son the evening before the murder. There remained the evidence of the blood, which the prosecution had professed to prove was not only human blood, but that of the victim himself. But the defense introduced experts, who not only denied that the blood in question was that of a human being, but showed that the best scientific authorities agree that the difference between human and animal blood cannot be determined after it has dried, as was the fact in this case.

On the whole, therefore, the scientific testimony not only served to confuse the jury, but positively helped the prisoner's case. The defense then proceeded to still further dissipate the web of circumstantial evidence which had been woven around Alley by satisfactorily accounting for every hour of his time from the moment Ellis disappeared till the time his body was discovered.

When the defense rested their case, public opinion and expectation had naturally, and justly, very much changed, and the probability of his conviction had practically disappeared. No one had seen the murder, and the natural indisposition to condemn a man on circumstantial evidence alone was strengthened by the fact that much of what appeared strongest in this evidence had been overthrown by the defense. These considerations, joined with the traditional principle of holding every man innocent till his guilt is proved beyond the shadow of a doubt, resulted in a verdict of not guilty—a decision of the case with which the public will not be inclined to find fault.

XXVIII.

The Blue Dragoon.*

In the town of M——, in Holland, there lived, towards the close of the last century, an elderly widow, Madame Andrecht. She inhabited a house of her own, in company with her maid-servant, who was nearly of the same age. She was in prosperous circumstances; but, being in delicate health and paralyzed on one side, she had few visitors, and seldom went abroad except to church or to visit the poor. Her chief recreation consisted in paying a visit in spring to her son, who was settled as a surgeon in a village a few miles off. On these occasions, fearing a return of a paralytic attack, she was invariably accompanied by her maid, and, during these visits, her own house was left locked up, but uninhabited and unwatched.

* The following singular story of circumstantial evidence is from a collection of criminal trials, published at Amsterdam, under the title "Oorkonen uit de Gedenkschriften van het Strafregt, en uit die der menschlyke Mishappen; te Amsterdam. By J. C. Van Kersleren, 1820." Notwithstanding the somewhat romantic complexion of the incidents, it has been included as genuine in the recent German collection, *Der Neue Pitaval*, 7 Band.

On the 30th June, 17—, the widow, returning to M——, from one of these little excursions, found her house had been broken open in her absence, and that several valuable articles with all her jewels and trinkets, had disappeared. Information was immediately given to the authorities, and a strict investigation of the circumstances took place without delay.

The old lady had been three weeks absent, and the thieves of course had had ample leisure for their attempt. They had evidently gained access through a window in the back part of the house communicating with the garden, one of the panes of which had been removed, and the bolts of the window forced back, so as to admit of its being pulled up. The bolts of the back door leading into the garden had also been withdrawn, as if the robbers had withdrawn their plunder in that direction. The other doors and windows were uninjured; and several of the rooms appeared to have been unopened. The furniture, generally, was untouched; but the kitchen utensils were left in confusion, as if the robbers had intended removing them, but had been interrupted or pursued.

At the same time it was evident they had gone very deliberately about their work. The ceilings and doors of a heavy old press, the drawers of which had

been secured by strong and well constructed locks, had been removed with so much neatness that no part of the wood-work had been injured. The ceiling and doors were left standing by the side of the press. The contents, consisting of jewels, articles of value, and fine linens, were gone. Two strong boxes were found broken open, from which gold and silver coin, with some articles of clothing, had been abstracted. The value of the missing articles amounted to about two thousand Dutch guldens. The house, however, contained many other articles of value, which, singular enough, had escaped the notice of the thieves. In particular, the greater part of the widow's property consisted of property in the funds, the obligations for which were deposited, not in the press above mentioned, but in an iron chest in her sleeping room. This chest she had accidentally removed, shortly before her departure; placing it in a more retired apartment, where it had fortunately attracted no attention.

The robbery had, apparently, been committed by more than one person; and, it was naturally suspected, by persons well acquainted with the house, and with the circumstances of its inhabitants. The house itself, which was almost the only respectable one in the neghborhood, was situated in a retired

street. The neighboring dwellings were inhabited by the poorer classes, and not a few of the less reputable members of society. The inner fosse of the town, which was navigable, flowed along the end of the garden through which the thieves had, apparently, gained admittance, being separated from the garden only by a thin thorn hedge. It was conjectured that the thieves had made their way close to the hedge by means of a boat, and from thence had clambered over into the garden, along the walks and flower-beds of which foot-marks were traceable.

The discovery of the robbery had created a general sensation, and the house was surrounded by a crowd of curious idlers, whom it required some effort on the part of the police to prevent from intruding into the premises. One of them only, a baker, and the inhabitant of the house opposite to that of the widow, succeeded in making his way in along with the officers of justice. On his exit, he assumed an air of mystery, answered equivocally, and observed that people might suspect many things of which it might not be safe to speak.

In proportion, however, to his taciturnity, was the loquaciousness of a woolspinner, Leendert Van N——, the inhabitant of the corner house next to that of the widow. He mingled with the groups who

were discussing the subject; dropped hints that he had his own notions as to the culprits, and could, if necessary, give a clue to their discovery. Among the crowd who were observed to listen to these effusions, was a Jew dealer in porcelain, a suspected spy of the police. Before evening, the woolspinner received a summons to the town-house, and was called upon by the Burgomaster for an explanation of the suspicious expressions he had used. He stammered, hesitated, pretended he knew of nothing but general grounds of suspicion, like his neighbors; but being threatened with stronger measures of compulsion, he at last agreed to speak out, protesting at the same time, that he could willingly have spared persons against whom he had no grudge whatever, and would have been silent for ever, if he had foreseen the consequence of his indiscretion.

The substance of his disclosure was to this effect:—Opposite the German post-house, at the head of the street, in which the woolspinner lived, there was a little alehouse. Nicholas D—— was the landlord. He was generally known among his acquaintances, not by his baptismal or family name, but by the appellation of the Blue Dragoon, from having formerly served in the horse regiment of Colonel Van Wackerbarth, which was popularly known by

the name of the Blues. About two years before, he had become acquainted with and married Hannah, the former servant of Madame Andrecht, who had been six years in that situation, and possessed her entire confidence. Unwilling to part with her attendant, and probably entertaining no favorable notion of the intended husband, Madame Andrecht had long thrown impediments in the way of the match, so that the parties were obliged to meet chiefly at night, and by stealth. Nicholas found his way into the house at night through the garden of his acquaintance the woolspinner, and across the hedge which divided it from Madame Andrecht's. Of these nocturnal visits the woolspinner was at first cognizant, but, fearful of getting into a scrape with his respectable neighbor, he was under the necessity of intimating to the dragoon, that if he intended to continue his escalades, he must do so from some other quarter than his garden. Nicholas obeyed apparently, and desisted; but, to the surprise of the woolspinner, he found the lovers continued to meet not the less regularly in Madame Andrecht's garden. One evening, however, the mystery was explained. The woolspinner, returning home after dark, saw tied to a post in the canal, close by Madame Andrecht's garden, one of those small boats which were gener-

ally used by the dragoons for bringing forage from the magazine; and he at once conjectured that this was the means by which the dragoon was enabled to continue his nocturnal assignations. With the recollection of this passage in the landlord's history was combined a circumstance of recent occurrence, trifling in itself, but which appeared curiously to link in with the mode in which the robbery appeared to have been effected. Ten days before the discovery of the house-breaking, and while the widow was in the country, the woolspinner stated that he found, one morning, a dirty colored handkerchief lying on the grass bank of the fosse, and exactly opposite his neighbor's garden. He took it up and put it in his pocket, without thinking about it at the time. At dinner he happened to remember it, mentioned the circumstance to his wife, showed her the handkerchief, and observed jestingly, "If Madame Andrecht were in town, and Hannah were still in her service, we should say our old friend the Blue Dragoon had been making his rounds and had dropped his handkerchief." His wife took the handkerchief, examined it, and exclaimed, "In the name of wonder, what is that you say? Is not Hannah's husband's name Nicholas D——?" pointing out to him at the same time the initials N. D. in the corner.

Both, however, had forgotten the circumstance till the occurrence of the robbery naturally recalled it to the husband's mind.

The woolspinner told his story simply; his conclusions appeared unstrained; suspicion became strongly directed against the Blue Dragoon, and these suspicions were corroborated by another circumstance which emerged at the same time.

During the first search of the house, a half burnt paper, which seemed to have been used for lighting a pipe, was found on the floor, near the press which had been broken open. Neither Madame Andrecht nor her maid smoked; the police officers had no pipes when they entered the house; so the match had in all probability been dropped on the ground by the house-breakers.

On the examination of the remains of the paper, it appeared to have been a receipt, such as was usually granted by the excise to innkeepers for payment of the duties on spirits received into the town from a distance, and which served as a permit entitling the holder to put the article into his cellars. The upper part of the receipt, containing the name of the party to whom it was granted, was burnt, but the lower part was preserved, containing the signature of the excise officer, and the date of the permit; it

was the 16th March of the same year. From these materials it was easy to ascertain what innkeeper in the town had, on that day, received such a permit for spirits. From an examination of the excise register, it appeared that on that day Nicholas D—— had received and paid the duties on several ankers of Geneva. Taken by itself, this would have afforded but slender evidence that he had been the person who had used the paper for a match, and had dropped it within Madame Andrecht's room; but, taken in connection with the finding of the handkerchief, and the suspicious history of his nocturnal rambles which preceded it, it strengthened in a high degree the suspicions against the ex-dragoon.

After a short consultation, orders were issued for his apprehension. Surprise, it was thought, would probably extort from him an immediate confession. His wife, his father—a man advanced in years—and his brother, a shoemaker's apprentice, were apprehended at the same time.

A minute search of the house of the innkeeper followed; but none of the stolen articles were at first discovered, and indeed nothing that could excite suspicion, except a larger amount of money than might perhaps have been expected. At last, as the search was on the point of being given up, there was

found in one of the drawers a memorandum book. This was one of the articles mentioned in the list of Madame Andrecht's effects; and, on inspection, there could be no doubt that this was the one referred to—for several pages bore private markings in her own handwriting, and in a side pocket were found two letters bearing her address. Beyond this, none of the missing articles could be traced in the house.

The persons apprehended were severally examined. Nicholas D—— answered every question with the utmost frankness and unconcern. He admitted the truth of the woolspinner's story of his courtship, his nightly scrambles over the hedge, and his subsequent visits to his intended by means of the forage boat. The handkerchief he admitted to be his property. When and where he had lost it he could not say. It had disappeared about six months before, and he had thought no more about it. When the pocket-book which had been found was laid before him, he gave it back without embarrassment, declared he knew nothing of it, had never had it in his possession, and shook his head with a look of surprise and incredulity when told where it had been found.

The other members of his household appeared

equally unembarrassed; they expressed even greater astonishment than he had done, that the pocket-book, with which they declared themselves entirely unacquainted, should have been found in the place where it was. The young wife burst out into passionate exclamations; she protested it was impossible; or if the book was really found on the spot, that it was inexplicable to her how it came there. The Saturday before (her apprehension having taken place on a Thursday), she had brushed out the press from top to bottom—and nothing of the kind was then to be found there.

In this stage of the inquiry, a new witness entered upon the scene. A respectable citizen, a dealer in wood, voluntarily appeared before the authorities, and stated that his conscience would no longer allow him to conceal certain circumstances which appeared to bear upon the question, though, from an unwillingness to come forward or to appear as an informer against parties who might be innocent, he had hitherto suppressed any mention of them.

Among his customers was the well-known carpenter, Isaac Van C——, who was generally considerably in arrears with his payments. These arrears increased; the wood merchant became pressing; at last he threatened judicial proceedings. This

brought matters to a point. A few days before the discovery of the robbery at Madame Andrecht's the carpenter made his appearance in his house, and entreated him to delay proceedings, which he said would be his ruin, by bringing all his creditors on his back. "See," said he, "in what manner I am paid myself," putting a basket on the table, which contained a pair of silver candlesticks and a silver coffee-pot. "One of my debtors owes me upwards of sixty guldens; I have tried in vain to get payment, and have been glad to accept of these as the only chance of making anything of the debt. From the silversmiths here I could not get the half the value for them; I must keep them by me till I go to Amsterdam, where such things are understood; but I shall leave them with you in pledge for my debt." The wood merchant at first declined receiving them, but at length, thinking that it was his only prospect of obtaining ultimate payment, he yielded, and the articles remained on his hands.

A few days afterwards, the robbery became public; the list of the silver articles contained a coffee-pot and candlesticks; and the wood merchant, not doubting that the articles pledged had formed part of the abstracted effects, placed them in the hands of the police.

The court ordered the basket with the plate to be placed, covered, upon the table, and sent forthwith for the carpenter. He arrived in haste, but seemed prepared for what followed, and without waiting for the interrogatories of the judge, he proceeded with his explanation.

Pressed by his creditor the wood merchant, the carpenter, in his turn, proceeded to press his own debtors. Among these was the Blue Dragoon, Nicholas D——, who was indebted to him in an account of sixty guldens for work done on his premises. Nicholas entreated for delay, but the carpenter being peremptory, he inquired whether he would not take some articles of old silver plate in payment, which, he said had belonged to his father, and had been left him as a legacy by an old lady in whose family he had been coachman. It was at last agreed that the carpenter should take the plate at a certain value as a partial payment, and it was accordingly brought to his house the same evening by the dragoon. The latter advised him, in the event of his wishing to dispose of the plate, to take it to Amsterdam, as the silversmiths of the place would not give him half the value for the articles. The carpenter asked him why he had not carried it to Amsterdam himself. "So I would," he answered,

"if you had given me time. As it is, give me your promise not to dispose of it here—I have my own reasons for it."

If this statement was correct—and there seemed no reason to doubt the fairness of the carpenter's story—it pressed most heavily against the accused. He was thus found in possession of part of the stolen property, and disposing of it, under the most suspicious circumstances, to a third party

He was examined anew, and the beginning of his declaration corresponded exactly with the deposition of the carpenter. The latter had worked for him; he was sixty guldens in his debt. He was asked if he had paid the account: he answered he had not been in a condition to do so. He was shown the silver plate, and was told what had been stated by the carpenter. He stammered, became pale, and protested he knew nothing of the plate; and in this statement he persisted in the presence of witnesses. He was then shown the gold which had been found in his house. It belonged, he said, not to himself, but to his father-in-law.

This part of the statement, indeed, was confirmed by the other inmates of his family; but, in other respects, their statements were calculated to increase the suspicions against him. Nicholas, for instance,

had stated that no part of his debt to Isaac had been paid—that in fact he had not been in a condition to do so—while the other three members of the household, on the contrary, maintained that a few months before he *had* made a payment of twenty guldens to Isaac, expressly to account of this claim. Nicholas became vastly embarrassed when this contradiction between his own statement and the evidence of the witnesses was pointed out to him. For the first time his composure forsook him—he begged pardon for the falsehood he had uttered. It was true, he said, that he had counted out twenty guldens, in the presence of the members of his family, and told them it was intended as a payment to account of Isaac's claim; but the money had not been paid to his creditor. He had been obliged to appropriate it to the payment of some old gambling debts, of which he could not venture to inform his wife.

This departure from truth on the part of the accused had apparently but slender bearing on the question of the robbery; but it excited a general doubt as to his statements, which further inquiry tended to confirm. The carpenter, anxious to remove any suspicion as to the truth of his own story, produced a sort of account-book kept by himself, in which, under the date of 23d June, there was

the following entry, — "The innkeeper, Nicholas D——, has this day paid me the value of thirty guldens in old silver." The houskeeper and apprentice of the carpenter also deposed that they had been present on one occasion when the dragoon had proposed that their master should take the silver in payment.

The dragoon was removed from his provisional custody to the prison of the town; the others were subjected to a close surveillance, that all communication between them might be prevented. As all of them, however, persisted in the story, exactly as it had at first been told, stronger measures were at length resorted to. On the motion of the burgomaster, as public prosecutor, "that the principal party accused, Nicholas D——, should be delivered over to undergo the usual preparatory process for compelling confession," namely the torture, the court, after consideration of the state of the evidence, unanimously issued the usual warrant against him to that effect.

The torture was to take place the next day, when the following letter, bearing the post-mark of Rotterdam, was received by the court:

"Before I leave the country, and betake myself where I shall be beyond the reach either of the court

of M—— or the military tribunal of the garrison, I would save the poor unfortunate persons who are now prisoners at M——. Beware of punishing the innkeeper, his wife, his father, and brother, for a crime of which they are not guilty. How the story of the carpenter is connected with theirs, I cannot conjecture. I have heard of it with the greatest surprise. The latter may not himself be entirely innocent. Let the judge pay attention to this remark. You may spare yourselves the trouble of inquiring after me. If the wind is favorable, by the time you read this letter I shall be on my passage to England.

"JOSEPH CHRISTIAN RUHLER,
"Former Corporal in the Company of Le Lery."

The court gladly availed themselves of the apportunity afforded by this letter to put off the torture. At first sight it did not appear a mere device to obtain delay. A company under Captain Le Lery was in garrison in the town; in that company there was a corporal of the name of Ruhler, who some weeks before had deserted and disappeared from his quarters. All inquiries after him since had proved in vain. The court subsequently learned from the report of the officer in command, that he had disappeared the evening before the day when the news of the robbery became public. He had been last seen by the guard in the course of the afternoon before his disappearance. Some connection between the events appeared extremely probable.

But a new discovery seemed suddenly to demolish the conclusions founded on the letter. It had been laid before the commanding officer, who at once declared the handwriting was counterfeited; it was not that of Ruhler, which was well known, nor had it the least resemblance to it. The evidence of several of his comrades, and a comparison of the handwriting with some regimental lists, undoubtedly in the handwriting of Ruhler, proved this beyond a doubt.

The strongest efforts were now made to discover the true writer of the letter; and meantime the torture was put off, when two other important witnesses made their appearance upon the stage. Neither had the least connection with the other; nay, the circumstances which they narrated appeared in some respects contradictory, and while they threw light on the subject in one quarter, they only served to darken it in another.

A merchant in the town, who dealt in different wares, and lived in the neighborhood of Madame Andrecht's house, had been absent on a journey of business during the discovery of the robbery, and the course of the subsequent judicial proceedings. Scarcely had he returned and heard the story of the robbery, when he voluntarily presented himself next

morning before the authorities, for the purpose, as he said, of making important revelations, which might have the effect of averting destruction from the innocent.

At the time when the robbery must have taken place, he had been in the town. The carpenter, Isaac Van C——, called upon him one day, begging the loan of the boat, which he was in the custom of using for the transport of bales and heavy packages to different quarters of the town. The boat generally lay behind the merchant's house, close to his warehouse, which was situated on the bank of the town fosse already alluded to. Isaac assured him he would require the boat only for a night or two, and would take care that it was returned in the morning in good condition. To the question why he wanted the boat at night, he, after some hesitation, returned for answer, that he had engaged to transport the furniture of some people who were removing, and who had their own reasons for not doing so in daylight, implying that they were taking French leave of their creditors. "And you propose to lend yourself to such a transaction?" said the merchant, peremptorily refusing the loan of the boat. The carpenter interrupted him; assured him he had only jested; that his real object was

only to amuse himself in fishing with some of his comrades; and that he had only not stated that at first, as the merchant might be apprehensive that the operation would dirty his boat. The merchant at last yielded to the continued requests of the carpenter, and agreed to lend him the boat, but upon the express condition that it should be returned to its place in the morning. In this respect the carpenter kept his word; when the merchant went to his warehouse in the morning, he saw the carpenter and his apprentice engaged in fastening the boat. They went away without observing him. It struck him, however, as singular, that they appeared to have with them neither nets nor fishing tackle of any kind. He examined the boat, and was surprised to find it perfectly clean and dry, whereas, if used for fishing, it would probably have been found half filled with water, and dirty enough. In this particular, then, the carpenter had been detected in an untruth. The boat had not been fastened to its usual place; the merchant jumped into it for that purpose, and from a crevice in the side he saw something protruding; he took it out; it was a couple of silver forks wrapped in paper. Thus the carpenter's first version of the story—as to the purpose for which he wanted the boat—was the true one

after all. He *had* been assisting some bankrupt to carry off his effects. Angry at having been thus deceived, the merchant put the forks in his pocket, and set out forthwith on his way to Isaac's. The carpenter, his apprentice, and his housekeeper, were in the workshop. He produced the forks. "These," said he, "are what you have left in my boat. Did you use these to eat your fish with?"

The three were visibly embarrassed. They cast stolen glances upon one another; no one ventured to speak. The housekeeper first recovered her composure. She stammered out,—"that he must not think ill of them; that her master had only been assisting some people who were leaving the town quietly, to remove their furniture and effects." As the transaction was unquestionably not of the most creditable character, this might account for the visible embarrassment they betrayed; when he demanded, however, the names of the parties whose effects they had been removing, no answer was forthcoming. The carpenter at last told him he was not at liberty to disclose them then, but that he should learn them afterwards. All three pressingly entreated him to be silent as to this matter. He was so; but in the mean time made inquiry quietly as to who had left the town, though without success.

Shortly after, his journey took place, and the transaction had worn out of mind, till recalled to his recollection on his return, when he was made aware of the whole history of the robbery; and forthwith came to the conclusion, that there lay at the bottom of the matter some shameful plot to implicate the innocent, and shield those whom he believed to be the true criminals, namely, Isaac Van C——, his apprentice, and housekeeper, the leading witnesses, in fact, against the unfortunate dragoon.

The judge issued an immediate order for the arrest of the carpenter and his companions, before publicity should be given to the merchant's disclosures. No sooner were they apprehended, than a strict scrutiny was made in the carpenter's house.

This measure was attended with the most complete success. With the exception of a few trifles, the whole of the effects which had been abstracted from Madame Andrecht's were found in the house. The examination of the prisoners produced a very different result from those of Nicholas, and his comrades. True, they denied the charges, but they did so with palpable confusion, and their statements abounded in the grossest contradictions of each other and even of themselves. They came to re-

criminations and mutual accusations; and, being threatened with the torture, they at last offered to make a full confession. The substance of their admissions was as follows:

Isaac Van C——, his apprentice, and his housekeeper, were the real perpetrators of the robbery at Madame Andrecht's. Who had first suggested to them the design does not appear from the evidence. But with the old lady's house and its arrangements they were as fully acquainted as the dragoon. The apprentice, when formerly in the service of another master, had wrought in it, and knew every corner of it thoroughly. They had borrowed the boat for the purpose of getting access across the canal into the garden, and used it for carrying off the stolen property, as already mentioned. On the morning when the robbery became public, the master and the apprentice had mingled with the crowd to learn what reports were in circulation on the subject. Among other things the apprentice had heard that the woolspinner's wife had unhesitatingly expressed her suspicions against the Blue Dragoon. Of this he informed his comrades, and they, delighted at finding so convenient a scapegoat for averting danger from themselves, forthwith formed the design of directing, by every means in

their power, the suspicions of justice against the innkeeper.

The apprentice entered the drinking room of the innkeeper, and called for some schnapps, at the same time asking for a coal to light his pipe. While the innkeeper went out to fetch the coal, the apprentice took the opportunity of slipping the widow's memorandum book, which he had brought in his pocket, betwixt the drawers.

If these confessions were to be trusted, the dragoon and his family seemed exculpated from any actual participation in the robbery. Still, there were circumstances which these confessions did not clear up. That the carpenter had himself pledged the silver plate with the wood merchant, without having received it from Nicholas, was now likely enough; he had accused him, probably, only to screen himself. But how came Nicholas's handkerchief to be found at the side of the hedge? How came the excise receipt, which belonged to him, to be used as a match by the thieves? The carpenter and his comrades declared that as to these facts they knew nothing; and as they had now no inducement to conceal the truth, there could be no reasonable doubt that their statement might, in these particulars, be depended upon.

The suspicion again arose that other accomplices must be concerned in the affair; and the subject of the letter from the corporal who had deserted, became anew the subject of attention. If not written by himself, it might have been written at his suggestion, and in one way or other he might have a connection with the mysterious subject of the robbery.

In fact, while the proceedings against the carpenter and his associates were in progress, an incident had occurred, which could not fail to awaken curiosity and attention with regard to this letter. The schoolmaster of a village about a league from the town presented himself before the authorities, exhibited a scrap of paper on which nothing appeared but the name Joseph Christian Ruhler, and inquired whether, shortly before, a letter in this handwriting and subscribed with this name, had not been transmitted to the court? On comparing the handwriting of the letter with the paper exhibited by the schoolmaster, it was unquestionable that both were the production of the same hand.

The statement of the schoolmaster was this:

In the village where he resided, there was a deaf and dumb young man, named Henry Hechting,

who had been sent by the parish to the schoolmaster for board and education. He had succeeded in imparting to the unfortunate youth the art of writing; so perfectly, indeed, that he could communicate with any one by means of a slate and slate-pencil which he always carried about with him. He also wrote so fair a hand, that he was employed by many persons, and even sometimes by the authorities, to transcribe or copy writings for them. Some time before, an unknown person had appeared in the village, had inquired after the deaf and dumb young man in the schoolmaster's absence, and had taken him with him to the alehouse to write out something for him. The unknown had called for a private room, ordered a bottle of wine, and, by means of the slate, gave him to understand that he wanted him to make a clean copy of the draft of a letter which he produced. Hechting did so at once without suspicion. Still, the contents of the letter appeared to him of a peculiar and questionable kind, and the whole demeanor of the stranger evinced restlessness and anxiety. When he came, however, to add the address of the letter, "To Herr Van der R——, Burgomaster of M——," he hesitated to do so, and yielded only to the pressing entreaties of the stranger, who paid him a gulden for

his trouble, requesting him to preserve strict silence as to the whole affair.

The deaf and dumb young man, when he began to reflect on the matter, felt more and more convinced that he had unconsciously been made a party to some illegal transaction. He at last confessed the whole to his instructor, who at once perceived that there existed a close connection between the incident which had occurred and the criminal procedure in the noted case of the robbery. The letter of the corporal had already got into circulation in the neighborhood, and was plainly the one which his pupil had been employed to copy. The schoolmaster set on foot a small preliminary inquiry. He hastened to the innkeeper of the village inn, and asked him if he could recollect the stranger who some days before had ordered a private room and a bottle of wine, and who had been for some time shut up with the deaf and dumb lad. The host remembered the circumstance, but did not know the man. His wife, however, recollected that she had seen him talking on terms of cordial familiarity with the corn miller, Overblink, as he was resting at the inn with his carts. The schoolmaster repaired on the spot to Overblink, inquired who was the man with whom he had conversation and shaken hands some days

before at the inn; and the miller without much hesitation, answered, that he remembered the day, the circumstance, and the man, very well; and that the latter was his old acquaintance the baker, H——, from the town. The schoolmaster hastened to lay these particulars before the anthorities.

How, then, was the well-known baker, H——, implicated in this affair, which seemed gradually to be expanding itself so strangely? The facts as to the robbery itself seemed exhausted by the confessions of the carpenter and his associates. They alone had broken into the house—they alone had carried off and appropriated the stolen articles. And yet, if the baker was entirely unconnected with the matter, what could be his motive for mixing himself up with the transaction, and writing letters, as if to avert suspicion from those who had been first accused? Was his motive simply compassion? Was he aware of the real circumstances of the crime, and its true perpetrators? Did he know that the Blue Dragoon was innocent? But if so, why employ this mysterious and circuitous mode of assisting him? Why resort to this anxious precaution of employing a deaf and dumb lad as his amanuensis? why such signs of restlessness and apprehension,—such anxious injunctions of silence? Plainly the baker was not

entirely innocent: this was the conviction left on the minds of the judges; for it was now recollected that this baker was the same person who, on the morning when the robbery was detected, had contrived to make his way into the house along with the officers of justice. It was he who had lifted from the ground the match containing the half-burnt receipt, and handed it to the officers present. His excessive zeal had even attracted attention before. Had he, then, broken into the house independently of the carpenter? Had he, too, committed a robbery—and was he agitated by the fear of its detection? But all the stolen articles had been recovered, and all of them had been found with the carpenter. The mystery, for the moment, seemed only increased; but it was about to be cleared up in a way wonderful enough, but entirely satisfactory.

While the schoolmaster and the miller Overblink were detained at the council-chamber, the baker H—— was taken into custody. A long and circumstantial confession was the result, to the particulars of which we shall immediately advert. From his disclosures, a warrant was also issued for the apprehension of the woolspinner, Leendert Van N—— and his wife—the same who had at first circulated the reports and suspicions against the dragoon; and

who had afterwards given such plausible, and, as it appeared, such frank and sincere information against him before the court. Both had taken the opportunity of making off; but the pursuit of justice was successful—before evening they were brought back and committed to prison.

The following disclosures were the result of the confessions of the guilty, and of the other witnesses who were examined.

On the evening of the 29th June, there were assembled in the low and dirty chamber of the wool-spinner, Leendert Van N——, a party of card-players. It has already been mentioned that this quarter of the town was in a great measure inhabited by the disreputable portion of the public—only a few houses, like those of Madame Andrecht, being occupied by the better classes. The gamblers were the Corporal Ruhler, of the company of Le Lery, then lying in garrison in the place, the master baker H——, and the host himself, Leendert Van N——. The party were old acquaintances; they hated and despised each other, but a community of interests and pursuits drew them together.

The baker and corporal had been long acquainted; the former baked the bread for the garrison company, the latter had the charge of

receiving it from him. The corporal had soon detected various frauds committed by the baker, and gave the baker the choice of denouncing them to the commanding officer, or sharing with him the profits of the fraud. The baker naturally chose the latter, but hated the corporal as much as he feared him; while the latter made him continually feel how completely he considered him in his power.

A still deadlier enmity existed between the corporal and the woolspinner and his wife. The latter had formerly supplied the garrison with gaiters and other articles of clothing, and he had reason to believe that the corporal had been the means of depriving him of this commission, by which he had suffered materially. But the corporal had still a good deal in his power; he might be the means of procuring other orders, and it was necessary, therefore, to suppress any appeaarance of irritation, and even to appear to court his favor.

These worthy associates were playing cards on the evening above-mentioned; they quarreled; and the quarrel became more and more embittered. The long suppressed hatred on the part of the baker and the woolspinner burst forth. The corporal retorted in terms equally offensive; he applied to them the epithets which they deserved. From words they

proceeded to blows, and deadly weapons were laid hold of on both sides. But two male foes and a female fury, arrayed on one side, were too much for even a soldier. The corporal, seized and pinioned from behind by the woman, fell under the blows of the woolspinner. As yet the baker had rather hounded on the others than actually interfered in the scuffle; but when the corporal, stretched on the ground, and his head bleeding from a blow on the corner of the table, which he had received in falling, began to utter loud curses against them, and to threaten them all with public exposure—particularly that deceitful scoundrel the baker—the latter, prompted either by fear or hatred, whispered to the woolspinner and his wife that now was the time to make an end of him at once; and that if they did not, they were ruined.

The deadly counsel was adopted; they fell upon the corporal; with a few blows life was extinct. The deed was irrevocable; all three had shared in it; all were alike guilty, and had the same reason to tremble at the terrors of the law. They entered into a solemn mutual engagement to be true to each other and to preserve inviolable secresy as to the crime.

On the night of the murder, they had devised

no plan for washing out the blood, and removing the body, which of course required to be disposed of, so that the disappearance of Ruhler might cause no suspicion. The next morning, however, they met again at the woolspinner's house to arrange their plans. Suddenly a noise was heard in the street,—it was the commotion caused by the news of the discovery of the robbery at Madame Andrecht's. The culprits stood pale and confounded. What was more probable than that an immediate search in pursuit of the robbers, or of the stolen articles, would take place into every house of this suspected and disreputable quarter. The woolspinner's house was the next to that which had been robbed; the flooring was at that moment wet with blood; the body of the murdered corporal lay in the cellar.

The object, then, was to give to the authorities such hints as should induce them to pass over the houses of the baker and the woolspinner. The woolspinner's wife had the merit of devising the project which occurred to them. The Blue Dragoon was to be the victim. A robbery had taken place. Why might he not have been the criminal? He had often scaled the hedge—had often entered the house at night during his courtship. But then a corroborating circumstance might be required to ground

the suspicion. It was supplied by the possession of a handkerchief which he had accidentally dropped in her house, and which she had not thought it necessary to restore to him.

The invention of the baker came to the aid of the woolspinner's wife. One token was not enough; a second proof of the presence of the dragoon in Madame Andrecht's house must be devised. The baker had, one day, been concluding a bargain with a peasant before the house of the dragoon. He required a bit of paper to make some calculation, and asked the host for some, who handed him an old excise permit, telling him to make his calculations on the back. This scrap of paper the baker still had in his pocket-book. This would undoubtedly compromise the dragoon. But then it bore the name and handwriting of the baker on the back. This portion of it was accordingly burnt; the date and the signature of the excise officer were enough for the diabolical purpose it was intended to effect. It was rolled up into a match, and deposited by the baker (who, as already said, had contrived to make his way along with the police into the house) upon the floor, where he pretended to find it, and delivered it to the authorities.

The machinations of these wretches were uncon-

sciously assisted by those of the carpenter and his confederates. The suspicion which the handkerchief and the match had originated, the finding of the pocket-book within the house of the dragoon appeared to confirm and complete,—an accidental concurrence of two independent plots, both resorted to from the principle of self-preservation, and having in view the same object.

But this object, so far as concerns the baker and the woolspinner, had been too effectually attained. They had wished to excite suspicion against Nicholas, only with the view of gaining time to remove the corpse, and efface the traces of the murder. This had been effected—their intrigue had served its purpose; and they could not but feel some remorse at the idea that an innocent person should be thereby brought to ruin.

They met and consulted as to their plans. A scheme occurred to them which promised to serve a double purpose,—by which delay might be obtained for Nicholas, while at the same time it might be made the means of permanently ensuring their own safety. To resuscitate the murdered Corporal Ruhler in another quarter, and to charge him with the guilt of the robbery, might serve both ends. It gave a chance of escape to Nicholas; it accounted

for the disappearance of the corporal. Hence the letter which represented him as alive, as the perpetrator of the robbery, and as a deserter flying to another country; which they thought would very naturally put a stop to all further inquiry after him.

But their plan was too finely spun, and the very precautions to which they had resorted, led to discovery. If they had been satisfied to allow the proposed letter to be copied out by the woolspinner's wife, as she offered, to be taken by her to Rotterdam, and put into the post, suspicion could hardly have been awakened against them; the handwriting of the woman, who had seldom occasion to use the pen, would have been unknown to the burgomaster or the court. The deaf and dumb youth, to whom they resorted as their copyist, betrayed them; step by step they were traced out,—and, between fear and hope, a full confession was at last extorted from them.

Sentence of death was pronounced against the parties who had been concerned in the housebreaking as well as in the murder, and carried into effect against all of them, with the exception of the woolspinner's wife, who died during her imprisonment. The woolspinner alone exhibited any signs of penitence.

XXIX.

The Miller's Niece.

NEAR the town of C——, in Yorkshire, there lived, in the last century, an old bachelor, who had thriven well as a miller. His name was John Smith; but he was generally known in his neighborhood only by the title of "Old Johnny." He was a man of, at least, average honesty, not ill-disposed, very illiterate, and wholly devoted to worldly gain. Old Johnny was never seen at church; his mill was his place of worship. He was a sincere money-worshiper; and never attempted to disguise the fact by contributions to any charities or religious institutions. The house in which he lived was situated close behind his mill, on the bank of the river which flows at the foot of the hill on which the town is built. On that side of the stream there were no other houses; but, within a stone-throw of his mill, on the side of the river nearer the town, there was a collection of cottages known by the name of Ford-place, and noted as a resort for vagabonds. About half a mile further up the river, there was a respect-

able house inhabited by Stephen Bracewell, an attorney, and his only son Richard, who belonged to the same profession. Old Johnny's house was one of those substantial stone-built farm houses, with a large porch, low windows, and stone floors, which are still to be seen in many of the rural districts of Yorkshire and Lancashire.

Margaret, the miller's niece, presided over his domestic economy. She was a sensible, shrewd, and well-domesticated young woman, the only relative of whom the old man took any notice, and had made herself seem indispensable to the miller's comfort by her good management of his household. There was only one point of disagreement between the miller and his neice, and this was in the encouragement which she gave to the addresses of Richard, the son of the attorney whom we have mentioned. Though Richard was a young man of good character, he had no great worldly prospects; besides, in some business which they had transacted together, Old Johnny had quarrelled with Stephen Bracewell. This, added to his dislike of losing a good housekeeper, made the miller violently opposed to the proposed match, and he never failed to show a disconcerted aspect when Richard had visited the mill. Besides this opposition, Richard had to en-

counter a rival candidate for Margaret's hand in a man of a very singular character. There lived a few woolen weavers at Fording-place, and among them was a man rather beyond the middle age, of the name of Singleton. In some way he had acquired more knowledge than his neighbors; for he could read, and even write. His hopeless passion for Margaret, or some other cause, had impaired his intellect, and he excited the curiosity of his neighbors by the accounts of his "visions," which he committed to paper, and in which Margaret often, much to her own dissatisfaction, played the most prominent part. Though certainly crazy, he was frequently consulted as a medical adviser by his ignorant neighbors, and even by people who came from a distance for the purpose; for he was deep in all the mysteries of an old herbal, which told wondrous tales of the "starry influences" of Mars, Jupiter, Saturn, and all the other planets upon medical plants.

In this collection of cottages there was one miserable old house, notorious throughout the neighborhood as the resort of a gang of very disorderly characters. An old woman, of a most unfavorable aspect, with her daughter Nell, were the tenants of this old building, in which they sheltered a party

of vagabonds, of whom the two most notorious were known by the names of Will and Ned Crooks. A frequent visitor at this infamous abode was a young man of the most dissolute character, whose relatives kept a public house in the town. He had, it appears, some independent property, which he consumed among the basest of companions in the practice of the lowest debauchery.

Old John the miller had frequently had serious disputes with the inmates of Nell Crooks' establishment on account of their inroads upon his property; and he had threatened a prosecution against the brothers, Will and Ned, for stealing his poultry.

One day young Nell made her appearance at the mill, to urge a petition, in behalf of her friends, that Margaret would persuade the "auld fellow" not to proceed with the prosecution.

Margaret only answered that she should not interfere in the business at all; but that her uncle's patience was quite worn out by the numerous depredations made upon his property. Still the stout young advocate urged her petition.

But Margaret still persisted in her refusal, and, after trying in vain the force of a climax of entreaties, Nell had recourse to abusive and threatening speeches.

In the evening of the same day, both Margaret and her uncle went out to transact some little business with a man who rented a small piece of land belonging to the miller. The house of this little farmer was situated up in the fields, about half a mile distant from the mill. The path to it led along by the mill-stream, as far as a little copse, where the stream joined its parent river, from which it had been separated awhile that it might turn Old Johnny's wheel. At the farmer's house he drank, during his talk on business, rather more than his usual quantity of good ale; but, when he left the house, he flung aside the proffered assistance of Margaret's arm.

The night was misty, and Margaret frequently lost sight of her uncle's figure, as he walked a few yards in advance; but he now and then declared his presence by breaking forth in some half-tipsy ejaculation.

About half-past nine o'clock Margaret arrived at home, and immediately asked the servant-maid if her uncle had not just entered the house, when the housekeeper answered "No;" but added, that a young man had shortly before crossed the mill-stream, and gone over the ford. The niece expressed some surprise, but said that her uncle must

be somewhere about the premises, and would soon be coming in. Half an hour passed away, and then a footstep was heard in the porch.

"That is not the master," said the servant-maid.

"No," said Margaret, "it is Richard Bracewell," as she rose and opened the door for her visitor.

Shortly afterwards the servant-maid left the house, professing to feel great anxiety on account of her master's non-appearance. She did not enter the house again until Richard Bracewell had departed. When she came in Margaret asked, "Have you seen my uncle?"

"No," replied Susan.

"Then have you seen Master Richard Bracewell?"

"No," said Susan.

"Strange!" exclaimed Margaret; "for he has just left the house to search for my uncle."

"Then he has not crossed the ford," said Susan, "for I have only just now come over."

"But what should you be doing on the other side of the river?" said Margaret.

"Why, looking for my master, to be sure," the girl replied.

"Why should you think he had crossed the ford?" said Margaret.

"Nay, gracious Heaven only knows where he is," said the girl, with a confused look.

For three days no tidings were heard either of the disolute Will Naylor, or of the old miller; and all the neighborhood was full of excitement about these mysterious disappearances. The excitement of the people rose higher, when it was observed that Will Crooks was also missing. But on the evening of the third day the whole neighborhood was amazed by a singular incident.

Jonas Singleton, the crazy weaver, was in the habit, when his work was done, of taking a walk in the fields, over the ford, either for the purpose of seeing "visions," (as he called his hallucinations,) or of collecting medicinal herbs. He frequently returned from one of these rambles with a long story of some "vision" he had seen in the fields, and in which realities and strange fancies were most curiously intermingled. Accounts of these "visions" he would write out in a fair, legible hand; then throw them aside and soon forget them, or give them to the first person who asked him if he had any "new visions!" Sometimes he would put one of his papers into the hand of a child, telling him to give it to his father, and saying "there is something in it which concerns him." He also had

frequently sent his papers through the hands of Susan to her mistress, until Margaret had forbidden the girl to receive any more of them. It was a curious circumstance, that he generally prefaced these visions with a statement of the exact spot on which he stood, and of the quarter of the heavens toward which his face was turned. Thus he would begin—"Standing in the west corner of the miller's field, near the copse, (where the cuckoo-pint flourishes,) moon in her first quarter—hazy weather—face south-south-west—I saw," &c. Though he wrote down these "visions" with all possible solemnity, he must have had some lurking sense of their reality, as he betrayed no emotion even when he had seen "burials of his neighbors," &c. He seldom communicated any of his visions in any other way than by writing, and, as the whole neighborhood was accustomed to his marvelous stories, if he had reported that he had discovered a chest of gold in the field, nobody would have run to look after it. But, on the evening of the third day after the miller's disappearance, this eccentric visionary returned from his usual ramble with an altered demeanor, excited and perturbed, so that he could hardly speak articulately. He seemed to have made some discovery which urged him to speak, and,

when his strange conduct had excited the curiosity of some neighbors who gathered round him, he burst forth with a revelation which astonished all present. "In the corner of the miller's field," said he, "just where the mill-stream flows by the copse, there lies in the water the body of old John Smith. *Why* he lies there, Mistress Margaret must tell; or, perhaps, Master Richard Bracewell may be able to give some information upon it, as he is a lawyer."

This sounded like a reality, and several of the hearers ran immediately to the place specified, and found that Singleton had, for once, seen nothing more than the fact. There, in the mill-stream, darkly shaded by overhanging boughs, lay the swollen corpse of the miller. The face was livid, and there were marks of bruises upon the temples.

By this time, the magistrate had heard of the occurrence, and issued orders that the body should be conveyed to a room beneath the town-hall. The coroner's inquest sat upon it the next day, and a verdict was returned, "Found in the mill-stream at the foot of the miller's field; but how the deceased came there, the jury cannot say."

Meanwhile great excitement was felt throughout the neighborhood, on account of the continued absence of Richard Bracewell, Will Crooks and

Will Naylor. At Fording-place the "visions" of Singleton and the insinuations of Nell had worked up the people to such a fury against Richard Bracewell and Margaret, that the latter was hardly safe in the mill; and, accordingly, Mr. Bracewell, the elder, gave her shelter in his house.

On the 14th day of November, Richard Bracewell returned, wet and weary, late in the evening, to his father's house. When this became known, and it was also circulated by the zealous Susan, that Mr. Bracewell had ransacked all the chests and drawers at the mill, and that Margaret had taken with her several valuable articles, popular indignation knew no bounds. A new excitement was raised when Will Crooks, on the following day, reappeared at the house of old Nell. His first question was if Master Bracewell had returned, and this was soon answered by the entrance of the person in question, attended by his father.

"Now, Will Crooks," said the younger Bracewell, "I wish to ask you, for the last time, if you can tell me anything of Naylor?"

Will Crooks refused to utter a word respecting Naylor, and told Bracewell to look to his "own business," which was "ugly enough."

Further altercation was prevented by the entrance

of the officers of justice, who at once apprehended all the parties present, on suspicion of having been concerned in the death of John Smith, and the disappearance of William Naylor.

In the morning of the same day, young Nell had laid a statement before the magistrate, that, on the evening of the miller's disappearance, young Bracewell had been drinking with Will Crooks at the Black Dog, and that both left the house together, about half-past eight o'clock. She had also repeated all that Susan had told of the conduct of her mistress on that fatal evening. On these grounds a warrant had been issued for the apprehension of the two Bracewells, Margaret, and Will Crooks. On the next day an examination of the prisoners took place. Mr. Bracewell the elder was liberated on bail, on account of the statement of his housekeeper, which asserted an *alibi;* but the others were sent to the prison, and fully committed to take their trial at the York assizes.

Shortly afterwards, Ned Crooks, and the old mistress of the infamous establishment at Fording-place, were apprehended on suspicion. The prisoners were removed to York Castle, and placed in separate cells.

The bills against Mr. Bracewell the elder, old

Nell Crooks, Ned Crooks, and young Nell, were ignored; but true bills were found against Richard Bracewell, jun., Margaret Smith, and William Crooks, for having been concerned in the death of John Smith.

During the interval between the commitment and the assizes, Mr. Bracewell, senior, was actively engaged in collecting witnesses for his son and Margaret Smith. Richard determined to conduct his own defense.

The first indictment was read, charging all the three prisoners at the bar with having been concerned in causing the death of John Smith, miller, &c., by drowning or other means.

To this all the prisoners pleaded "not guilty."

The first witness called was Susan Holmes, formerly a servant at the mill. The substance of her statement was as follows:

"I lived, for a year and a month, servant under Margaret Smith at the mill. I was generally on good terms with my mistress. I believe she has a hot temper, and does not like to be contradicted. I believe there was unpleasantness sometimes between master and mistress about Richard Bracewell. It had been getting worse, I think, a little before master disappeared. I was in the house all the time while master and mistress went to Robert Wilkinson's. Mistress came in about half-past nine. It was later

than I expected. She looked rather warm as I should say. I don't think her face is easily colored by a little walking or any sort of work. She asked me if master had come in—did not seem much surprised when I told her 'No.' She opened the door for Richard Bracewell. She had not been in the house five minutes when he came in. He looked flushed—not very much in liquor, I should say. He could walk steadily. I had seen a man cross the plank over the mill-stream just before mistress came in. You can see the plank from the kitchen window. I am sure it was not master. It was a misty night, but I could see his figure, and by his walking quickly I judged it was a young man. I cannot say it was Richard Bracewell."

Cross-examined.—"I went out soon after Richard Bracewell came in. I called at Nell Crooks'; I had been there before. Edward Crooks never paid me particular attentions. Young Nell was at home, and I talked with her awhile. When I returned I did not see Bracewell. I have been to Nell Crooks' several times since then."

The next witness called was Thomas Batters, the landlord of the Black Dog.

Examined by Mr. Bailey.—"The prisoners, Richard Bracewell and William Crooks, were at my house on the evening of the 7th of November last. They drank two quarts of ale between them. Crooks had been at the house nearly all day. Bracewell came in about half-past seven o'clock. They left the house about half-past eight. They were not drunk. Crooks had been at my house the evening before with William Naylor, the young man who is

missing. I cannot say how much ale they drank that night, the 6th of November. They went away very late. It was past midnight. Naylor was very drunk. He could not have walked without Crooks' assistance. I have never seen Naylor since he left my house with Crooks that evening. He was generally drunk. He spent a great deal of money; more than his own independent property would cover, I believe. Bracewell has never been at my house since the 7th of November."

Jane Hartley, Mr. Bracewell's housekeeper, was next examined.

"I have lived at Mr. Bracewell's, the attorney's, now for more than three years. Richard, the prisoner at the bar, I have always considered a steady young man. He took his dinner at home on the 7th of November. After dinner I did not see him again until late at night. He came in flushed and seeming tired; did not take any supper, but drank a tankard of ale. He went out, soon after breakfast, on the morning of the 8th, and I did not see him again until the 14th day of November."

Robert Wilkinson, a small farmer, testified:

"I rented a few acres of land under the deceased, John Smith. He was at my house on the evening of the 7th of November last. I paid him a small account for meal and bran. He was in very good spirits and took some ale. I cannot say justly how much; but it might be something more than three half-pints. It was not small beer. My wife generally brews good ale. I don't often take more than a pint of it at a time. The deceased, John Smith, often

called at my house. I never knew him to be out late at night. He was no ways given to drink. His niece, Margaret, did not say much while she was in my house with him. They seemed good friends when they left. I saw nothing of John after that, until I saw his body in the mill-stream just by the copse."

Robert Walker, surgeon, stated as follows:

"I saw the body of the deceased, John Smith, on the eleventh of November, but did not open it. I cannot say there were marks from blows upon the head or face. The skin was discolored; but it might be the effect of immersion in water. The body had evidently been in the water a considerable time. I should say as long as two or three days."

The witnesses for the defense were called

Sarah Stokes, an old nurse, testified as follows:

"I am a nurse, and attended the late John Smith during an illness, about two years ago, and I can testify that the conduct of Margaret Smith, the prisoner, was always exceedingly kind towards her uncle."

Mary Barnes, who had lived as servant-maid at the mill, confirmed the statement of the first witness. Next, a woman, who had called at the mill for milk on the morning after the miller was lost, stated that the grief and trouble of Margaret were evident.

John Green also, servant-man to Robert Wilkinson, stated that the path along by the mill-stream

was mossy, so that a footstep upon it would be inaudible at a little distance.

Edward Norris, a man who worked in the mill, stated that the mill-stream would, at certain times, be strong enough to to carry down a man's body as far as from the plank to the copse.

These were all the witnesses who came forward for the defense.

Richard Bracewell was then allowed to make his own defense.

. . . . "You have heard an individual of the name of William Naylor mentioned in the evidence given by the witness Thomas Batters, landlord of the Black Dog. Gentlemen, I must make some statements respecting that young man's character, to explain the interest which I felt, and the exertions I made on his behalf. He had been my school-fellow. He had good qualities, though they all seemed drowned in one vice — that of habitual, I might almost say constant, intemperance. His father left a sum of money for him, under the control of my father, to be paid quarterly. Unhappily, the young man was brought up to do no business or profession. He fell into the lowest company, and often, I have good reason to believe, lost sums of money, by unfair means, in such company. He had been miss-

ing from home since the 4th of November last; but, as his habits were so very reckless and irregular, this excited little surprise. His mother-in-law, however, was alarmed when she discovered, on the sixth of the same month, that he had taken a considerable sum of money from her till, and requested me to make my best efforts to find him, and recover some portion of the money. I knew, as all the neighbors knew, that he was very often in company with the brothers William and Edward Crooks. I went to the Black Dog on the evening of the 7th, and found William Crooks there. I gave him liquor, to conceal from him the object of my visit. When I inquired after Naylor, he seemed unwilling to give me any information. We left the Black Dog together, and I followed him to the house of Nell Crooks, in Fording-place, where he lodges. Here I was violently abused by the woman of the house, and a young woman generally known by the name of Young Nell, with whom Naylor was intimate. I left this house, and called at several public houses, inquiring for Naylor; at one of these houses I saw John Green, the servant-man of Robert Wilkinson, farmer, who informed me that he had seen William Crooks and William Naylor together, on the evening of the 6th instant. He told me that Naylor

appeared to be very drunk, and that he watched the two men until they approached a hovel in the Bridge-field, near to which was a manure heap. He would have followed them, but knew the character of the men. I determined to prosecute my search in the morning. After leaving John Green, I walked to the mill. I can give no particular reason for going there, beyond the motive which led me there as often as opportunity allowed. With regard to the lateness of the hour—half-past nine—I may observe, that the deceased, John Smith, generally retired to bed at nine o'clock, and I had frequently visited the house after that time. I had not been in the house five minutes before Margaret Smith told me, with some anxiety, that her uncle was missing, and I did not stay ten minutes longer in the house, after I heard that. Yet I cannot say that I felt any great anxiety on his account. Margaret Smith also told me that she thought her uncle was somewhat affected by the ale he had drank, and that he had threatened to 'cloot' me, if he found me in his house.

"As I left the mill, I said I would make some inquiry after him; but still I thought he must be about the place, and, as I did not wish to meet him, I neither looked for him nor called after him. I called at the house of an acquaintance, where I

stayed a few minutes, and then went home to my father's house, where I drank a tankard of ale, and immediately went to bed. The next morning I communicated my business to my father, put some money in my pocket, and went out, soon after breakfast, to renew my inquiries after the missing William Naylor. I went, first to John Green before mentioned, whom I found at work in the Bridgefield. We went to the manure-heap, mentioned before, and, turning over the straw, found marks as if the body of a man had recently lain there. I confess I had very dark suspicions of the treatment which the missing man had received from his companion, the prisoner, William Crooks. I then went up into the town, and had some conversation, at the Fleece tavern, with Mrs. Naylor, the mother-in-law of the missing individual. She told me that he had talked of leaving her, and going to visit some relatives near Burnley. I communicated to her my worst fears, and she earnestly begged me to make all possible inquiries after him. I rode on the coach to Burnley, where I, also, had friends, who pressed me to stay with them a few days. I did so; and employed much of my time in searching for Naylor, but to no purpose. His friends denied all knowledge of his having been in the neighbor-

hood. I wrote from Burnley to my father on the business." . . .

The witnesses called to corroborate Bracewell's statement were, a relative from Burnley, Mrs. Naylor, and the landlords of the public houses mentioned in his story. John Green, the servant-man of Robert Wilkinson, also confirmed all the statements with which his name was connected; and his brother, James Green, asserted that he had observed, on the morning of the 8th of November, the mark of a slipping foot at the edge of the mill-stream, a little above the copse on the way to the mill.

No witnesses appeared in favor of the prisoner Crooks.

The court was then adjourned, and met again in half-an-hour. The judge then proceeded with his summary of the evidence; but before he had uttered many words, Sergeant Jackson entered the court, and stated that he had fresh evidence now to lay before the jury, in the shape of a confession just made and signed by the prisoner, William Crooks. Bracewell and Margaret seemed amazed at this announcement, and there was great astonishment throughout the court while the sergeant read the following document:

"I, William Crooks, do solemnly declare that,

on the evening of the 7th of November last, I met the prisoner, Richard Bracewell, by appointment, at the Black Dog. He brought a short bludgeon in his pocket, and, after he had drunk several pints of ale, we set out to waylay the deceased, John Smith, near the copse. As the deceased was coming down the field, Bracewell whispered to me, 'The old villain has his niece with him.' But the niece stayed behind as her uncle approached the copse. It was a little after nine o'clock. We let him go past the copse a little way and then Bracewell said to me, 'Now 's your time, Crooks!' I then went after the miller; but Bracewell kept concealed in the copse. I struck the deceased twice on the head with the bludgeon, then drew the body to the mill-stream, and pushed it in. I then went into the copse. In a few minutes Bracewell and I came out of the copse, and drew the body down to the shady place where it was found. Bracewell promised me good pay; and, soon afterwards, we separated. This I solemnly declare, is the whole truth of the way in which the miller met his death.

"Signed, WILLIAM CROOKS, + *his mark.*

"In presence of, WILLIAM BAILEY, *Barrister.*

"SAMUEL KNUBBS, *Jailer.*"

The judge then asked the prisoner, Crooks, if he

had anything to add to this statement? He refused to say another word. Bracewell was then asked if he would make any reply to the statement just read over.

"My lord," said he, "I am utterly amazed at the awful wickedness of the man who has brought forward this false confession. It is throughout a lie; but I still beg for time—time, my lord, that the truth may become apparent."

The judge then addressed the jury, and they retired. After a long absence they returned with the verdict—"We find the prisoners, Richard Bracewell and William Crooks, GUILTY OF WILLFUL MURDER—the prisoner, Margaret Smith, NOT GUILTY."

The prisoners were next asked if they had anything to say why sentence should not be pronounced. Crooks refused to speak. "For *time*, my lord, is all my prayer," was the answer given by Bracewell.

The judge then put on his black cap, and pronounced sentence of death upon the condemned prisoners, warning them to prepare for a speedy execution. They were then conducted to their cells.

Crooks was sitting in his cell on the eve of execution. Young Nell had visited him during the day to inquire for Naylor; but he had repulsed her

with violence. Mr. Bracewell, the elder, with Margaret Smith, and the chaplain of the prison, now entered his cell. The chaplain earnestly entreated the prisoner, if he had anything more to confess, that he would not delay. Margaret fell upon her knees, and added the most touching prayers to the exhortations of the chaplain. The conscience of the prisoner seemed to be writhing in torture, until, late in the night, he bade them get pen and paper, and take down his last words in this world. The jailer and other witnesses were called in, and the prisoner make a second and last confession, as follows:

"Every word in my former confession is false, except that Richard Bracewell met me at the Black Dog on the 7th of November last. He came to inquire after Naylor. I was drinking with Naylor all day, on the 6th. He had plenty of money, and told me he meant to leave the country. He got very drunk towards evening, and said he would go to Nell Crooks, and bid good-bye to Young Nell. I took him into the cow-house in the Bridge-field, and there struck him one heavy blow on the head with a short bludgeon. He groaned and fell, as I thought, dead on the spot. I buried his body in the manure-heap. I have never seen him, nor heard of

him, from that day to this. I solemnly declare that Richard Bracewell never plotted with me against any man's life; but that all he ever had to do with me was to ask me about William Naylor. I state this for truth, as I hope God will have mercy on my miserable soul."

In consequence of this confession, Richard Bracewell was reprieved. The next morning, William Crooks was hanged in the presence of an unfeeling crowd, among whom were many of the people of Fording-place and the neighborhood; and Young Nell conspicuously exhibited her assumed grief on the occasion. The moment before the fatal bolt was drawn, the miserable man turned in reply to a question put to him by the chaplain, and confirmed solemnly, with his last breath, the statement he had made on the previous night.

Still Richard Bracewell was kept in confinement; but wonders had not yet ceased. A few days only after the execution of Crooks, a man arrived at Fording-place who declared himself to be the missing, *the murdered man*—William Naylor! The identity was proved by numerous witnesses, Young Nell being in the number. He was examined before the magistrates, and made the following statement:

"My name is William Naylor. You must all

recognize me. My mother-in-law is Mrs. Naylor of the Fleece. I need say nothing of my habits and character when I lived here; but I will tell you all I remember of the circumstances connected with my disappearance from this part of the country. I had been drinking for weeks. Richard Bracewell had refused to pay me money in advance. I had taken a considerable sum from the till of the Fleece. I had some notion of paying it back when I could. I was drinking with Will Crooks on the night I was seen there. He took me to a cow-house in the Brdge-field. I forget how we quarreled. I think we said something about hell. I remember a heavy blow on my head that made fire flash all around me, and then I remember nothing more until I found myself lying in a manure-heap in the morning. I lurked about in the copse of the miller's field all the day, and considered that this was a good opportunity for leaving the country. I determined to set out at night-fall. I was in the copse at night, I should say about nine o'clock. I was hardly in my right senses from the drink and the blow; but I remember well, I was frightened by hearing a gurgling noise in the stream, and I fancied I saw some great black body floating in the water; but I did not stay to examine it. I left the copse and went

over the plank by the mill. I saw nobody. I then crosed the ford, and walked nearly to Burnley that night, but did not call on my friends there. I have plenty of witnesses to prove where I have been ever siuce that time."

The result of the examination proved the truth of this statement, and Richard Bracewell was liberated a few days afterwards.

XXX.

The Boorn Case.

In 1812 there lived in Manchester a man named Barney Boorn, who had two sons Stephen and Jesse, and a son-in-law named Russel Colvin, all living with him. Colvin was an eccentric man, supposed to be insane at times, and frequently absented himself for days without notice and without giving any account of his adventures. At last he was missing so long that people began to make inquiries, and suspicions of foul play were aroused. Months and years passed, and yet there was no explanation of Colvin's absence. Some of the neighbors remembered that the Boorn brothers, very shortly after his disappearance, had declared that Colvin was dead, and that they had "put him where potatoes would not freeze." They had not been on good terms with him, and this added to the prejudice against them.

Note.—For a full report of this case see a pamphlet recently published by Hon. Leonard Sargeant, one of the counsel. *Journal Office, Manchester, Vt.*

Singularly enough, other circumstances began to accumulate against the brothers. Some children found a dilapidated hat, which was recognized as the one Colvin wore at the time of his disappearance. Search was then made for the bones of the supposed murdered man. Soon afterwards a dog uncovered some bones beneath an old stump, which at first were pronounced to be human bones, but subsequently were found not to be. An uncle of the boys had a dream in which Colvin came to his bedside and told him he had been murdered. A barn in the neigborhood was mysteriously burned, and it was at once conjectured that the murdered man had been buried under it, and that the fire was intended to destroy all traces of the crime. All these circumstances added to the excitement against the Boorns. Stephen was then out of the State, but Jesse was arrested. He confessed that his brother Stephen had told him a short time previously that he and Colvin had quarreled, and that he had killed Colvin by a blow on the head. The people of the neighborhood and for miles around spent the next few days in another search for Colvin's bones, but none were found.

Stephen Boorn was brought home. He denied the statement of Jesse and asserted his innocence.

The brothers were imprisoned to await the meeting of the Grand Jury. The principal witness before that body was a forger, who had been confined in jail with the Boorns. He reported in detail a confession of the murder by Jesse Boorn, and both the boys were indicted. This was in September, 1819, more than seven years after the disappearance of Colvin. In November the trial took place. Meanwhile Stephen was induced by the remarks upon the hopelessness of their case to confess the crime, in the expectation of mercy from the court. This confession was the chief evidence against them. Notwithstanding that it was drawn out by hope of obtaining a more favorable verdict, and that no body had been found as proof of the murder, or even that Colvin was dead, the brothers were convicted and sentenced to be hanged on the 28th of January, 1820. The character of the evidence upon which they were convicted will attract the attention of lawyers at this time as showing what remarkable changes have taken place in criminal jurisprudence. So decisive did the testimony against them appear to be that the mother of the convicts was expelled from the Baptist church, and the father was held as a prisoner for a time, upon the suspicion that they must have been accessory to the murder.

A few of the citizens who were disposed to be merciful, signed a petition for the commutation of the sentence against the Boorns. The legislature voted to change the sentence of Jesse to imprisonment for life, but refused to interfere with that of Stephen. It occurred to Stephen in an interview with his counsel that it would be a good plan to advertise for Colvin in the newspapers. Up to that point his counsel had believed him guilty, but he assured them that his confession was untrue and that he was innocent. The following notice was therefore printed in the Rutland *Herald:*

"MURDER.—Printers of newspapers throughout the United States are desired to publish that Stephen Boorn, of Manchester, in Vermont, is sentenced to be executed for the murder of Russel Colvin, who has been absent about seven years. Any person who can give information of said Colvin may save the life of the innocent by making immediate communication. Colvin is about five feet five inches high, light complection, light colored hair, blue eyes, about forty years of age.

"Manchester, Vt., Nov. 26, 1819."

Newspapers traveled slowly then, and Stephen's friends had but little hope that this would save him even if his story was true. Three days afterwards, says Mr. Sargeant's pamphlet, the *New York Evening Post* copied it, and "the next day it happened

that the notice was read aloud in one of the hotels in New York. Another man standing near, named Whelpley, said he had formerly lived in Manchester, and was well acquainted with Colvin, and related many anecdotes and peculiarities concerning him. Mr. Tabor Chadwick, of Shrewsbury, N. J., was also standing near, and listened to the conversation, which made a deep impression upon his mind. On thinking the matter over after his return home it occurred to him that a man then living with his brother-in-law, Mr. William Polhemus, of Dover, New Jersey, answered exactly the description of Colvin as given by Whelpley." Finally, he wrote a letter to *The Evening Post*, giving his conclusions. Whelpley saw it, went to Dover, identified Colvin, and, after great effort, induced him to visit Manchester. There was great rejoicing in the town, and Stephen Boorn was brought from the prison to fire the cannon that celebrated his deliverance.

XXXI.

Henry Ranthorpe.

HENRY RANTHORPE, a literary man, had made some slight success as provincial journalist and a political pampleteer. He had a tragedy in his trunk, a plot of a comedy in his head, and one five-pound note in his pocket; and he must needs come up, to win golden opinions and earn golden sovereigns in the great world of London. He had, moreover, made what is called an improvident marriage; that is, he had married a pretty girl without a farthing, who nevertheless was a very good wife. They took cheap lodgings in "the wilds of Pimlico." The tragedy had not been accepted; at least the manager had not vouchsafed a reply. Nevertheless, he worked at the comedy laboriously and hopefully. As he had, however, not been for years in a London theater, he thought, wisely enough, that it would considerably assist him if he saw a play acted at the house where *he* intended *his* five acts to be brought out. He had no special interest with actors or critics by which to secure an "order;" and his

wife agreed with him that the expenditure of half a crown, low as their finances were, would nevertheless be a wise outlay. Meanwhile a pair of boots, the only shoe-leather which he had brought with him from the country, had become so heelless, dilapidated, and shabby, that he made an investment in a pair of cheap shoes, and discarded the ruined bluchers. How to dispose of them was now his difficulty. He was ashamed to give them away at his lodgings; and they were not, after a grave consultation on the subject between his wife and himself, deemed worth of repair. He proposed taking them out into the street at night, and willfully making away with them, when he descried a dusty-looking cupboard high up in the wall of the bed-room, into which he threw his once serviceable boots. The cupboard-door would not close; but the cupboard being high up and in a corner, the bluchers did not show.

He started on his trip to the theater, leaving his fond and self-denying little wife to her tea, her needlework, and anticipations of his report of the evening's entertainment. He entered the pit entrance of the ——— Theater just after the first rush of half-past-six punctual folk had gone in; deposited his solitary half-crown, the only money

which, with the exception of a few pence, he had about him; and received his check-ticket, and was about to pass on, full of disappointment at not having been earlier, and of excitement at the prospect of a little novel amusement. To his intense astonishment, he had scarcely proceeded a yard when the money-taker called out to him and a policeman who was standing by simultaneously. The man in the little box had twisted the half-crown, which was a bad one; was gesticulating wildly, and declaiming incoherently; and Henry Ranthorpe, in a few moments, was in the custody of the officer. It was in vain that he protested his innocence, produced his card, gave his address, mentioned the names of two or three friends he knew in London. The money-taker winked knowingly to the officer, who smiled tranquilly; and to the station-house they went. The inspector took the charge, heard the evidence, and he was placed in a wretched dark cell, where a riotous drunkard was singing and crying in turns. Afraid to alarm his wife by sending to her to state the the misfortune that had befallen him, he secured, by the good offices of the inspector, who was struck with his respectable appearance and his manner, a messenger, whom he sent with a note to his landlord, and to a friend in Piccadilly,

who was a respectable householder. They arrived, and gave so satisfactory an account of him, that the inspector, overstepping his duty, permitted him to go; and he reached home rather earlier than his wife expected him, with very little to say about the comedy which he was to have enjoyed, but with a full and impassioned narrative of the calamity that had befallen him. They sat together over their crust of bread-and-cheese and glass of beer, vowing vengeance against the manager of the theater and his employees, and discussing the expediency of bringing an action for false imprisonment.

They little knew how really narrow the escape had been. A *few days* afterwards, Ranthorpe observed the ugly old boots protruding a little at the cupboard-door. To get rid of this eye-sore, he took a chair, placed his trunk upon it, and opened the cupboard, in order to effectually secrete the boots. You may endeavor to imagine his astonishment when, in moving them, he descried two large bags. They were very heavy; and what do you suppose they contained? ONE HUNDRED BAD HALF-CROWNS EACH. There could be no doubt about their quality. He showed them to his wife, whose astonishment was as great as his own. They began to entertain strange

suspicions about the landlord; and next began to reflect that, after what had happened at the theater, he would probably *suspect them.* They, however, rang the bell, summoned the worthy householder, and showed him the useless and dangerous booty. They were relieved, however, by seeing his broad countenance, at first filled with amazement and distraction, suddenly illuminated with a glance of profound penetration, and a smile of self-satisfied sagacity. "I quite understand it now, ma'am," said their host, addressing Mrs. Ranthorpe. "Some months ago, two young men came one day and took these rooms. They gave me no reference, but offered to pay in advance, which, as I always like to be on the safe side, I allowed them to do. Their hours were very strange; but they came in and went out very quiet, and gave but very little trouble. Indeed, my missus said they were the best lodgers we had had for this many a day. The money was regular, and, what seems odd now, none of it *bad.* One day they went out together, after they had been in this house eight weeks; and from that day to this, I have never seen or heard of them. They certainly were very mysterious, and never told what their occupation was. A few clothes they left are up-stairs in a chest of drawers now, and a carpet-

bag and a portmanteau. I did have my suspicions, which I mentioned to the old woman, when I saw that two young men somewhat answering to their description had been tried at the Old Bailey, and sentenced to transportation."

Here ends this *curious case*. But suppose upon his arrest at the theater officers had been sent to search his lodgings, and the two bags, as they would have certainly been, found. His wife could not have been a witness, the possession of a bad half-crown, and the finding of two bags of bad half-crowns in his bed-room, his poverty, his almost friendlessness in London,—must not these facts have inevitably caused his conviction. Of what avail, against all this, witnesses to character? Of what avail the ingenuity and eloquence of counsel? The landlord of the house, so wise *after* the event, would probably have directed his suspicions immediately to his new lodgers, and the fact of Ranthorpe sitting up alone at late hours of the night, to write, and other facts having in them some *scintilla* of suspicion, would have been marshaled against him in compact array by the barrister prosecuting for the Mint. And this would have been a case of purely circumstantial evidence.

XXXII.

Case of Andrew Mirelees.

On the 14th January, 1749, Andrew Mirelees, a master tanner of Leith, set out from his house about seven o'clock in the morning, to go and receive some money of a customer who lived at Haddington, a town about fifteen miles from Edinburgh. He was expected by his family to return the same day. Being a man of regular habits, his wife became half distracted when midnight arrived, and her husband was still absent. About one in the morning, her fears were in some measure relieved by the sound of a horse's feet entering the stable yard. Mrs. Mirelees had a servant who sat up with her. Eagerly rising from their seats, and taking a light in their hands, they hurried out, nothing doubting but that the absent husband and master had arrived. Great indeed was their surprise, and inexpressible the alarm and terror which filled the bosom of the anxious wife, when she beheld the horse without its master, and the poor animal stabbed in many parts,—scarcely able to stand,

and apparently bleeding to death,—an event which soon afterwards took place. The wife and servant instantly concluded that Andrew Mirelees had been robbed and murdered, an idea that derived additional force from the ill repute of a wild and desolate common, across which the latter part of his homeward journey lay, and which had, in "olden times," been noted as the haunt of robbers and murderers.

Filled with the belief that her husband had certainly been robbed and murdered, the afflicted wife went early the next morning into Edinburgh; and upon stating the case to the chief magistrate, he immediately issued a proclamation, with a reward for detecting and apprehending the unknown delinquents. The rumor of the supposed murder was calculated to awaken strong feelings of sympathy for the widow, and abhorrence of the malefactors, and a multitude went out to search the common, expecting to find the body of the deceased. After some time thus employed, the mastiff that had followed Mirelees was found laying dead on a bed of furze, where the poor animal had crept, and bled to death from a number of deep gashes made in its body, in the same manner, and apparently with the same instrument by which the horse had been

wounded. The spectacle of the dog laying weltering in its gore, naturally led to the belief that its death had been the result of an attempt to defend its master against the assassins. The search after the corpse was then carried on with renovated zeal, but without success; they could trace the blood from the spot where the stream appeared to have commenced, but the greensward showed no signs or marks of any struggle, such as might have been expected from the horrid transaction which was supposed to have so recently occurred. At such a moment, the discovery of two chairmen, quite drunk, carrying a sedan, in which was a horseman's surtout coat, that was instantly recognized as being that in which Mr. Mirelees had gone out, and much stained with blood,—and also his hat, wig, spurs, and whip, excited a burst of horror and indignation. It was no easy task, on the part of the more sober-minded, to prevent the vehement and ferocious from putting them both to death on the spot, instead of taking them into custody, and leaving their punishment to the regular course of law. What rendered the guilt of the two chairmen so apparent as almost to exclude the possibility of their being innocent was, that in the pocket of one them a large clasp-knife, stained with blood, was

found, and the breadth of the blade tallied exactly with the stabs found in the body of the dead mastiff.

It was a very fortunate circumstance for the chairman, that during the search of their persons, and of their sedan-chair, Lord Elchies, one of the lords of the sessions, or chief judges, passed over the common, being then on his way to Edinburgh from his seat at Carberry. Seeing so many persons collected in so lonely a place, he stopped to make inquiry; and when he had heard the alarming recital, seen the slaughtered mastiff, and the blood-stained garments and bloody knife found upon the chairmen, his lordship instantly ordered the latter to be committed to prison, and strictly forbade every person using the least violence towards their person, on pain of the severest punishment that the law permitted. This admonition, and the certainty that the supposed murderers would be brought to justice, stilled the headstrong passions of the multitude, and in all probability saved two innocent men from being murdered on the spot.

The chairmen were so stupefied, as well as intoxicated, that neither the tremendous charge brought against them, nor the imminent peril of being torn to pieces by an enraged mob, had power to sober them. When they came to their senses, they ap-

peared astonished beyond measure at the heinousness of the charge, and scarcely less grieved and terrified when they reflected upon the very suspicious appearances which attended their present situation as prisoners, apprehended on a charge of having robbed and murdered Mr. Mirelees, whose blood-stained garments had been found in their possession. When the magistrates asked the prisoners what defense, if any, they had to offer, they stated that they had been employed to convey in their sedan-chair a sick person to Musselburgh, where, having received more than their fare, they spent it along with some strangers whom they chanced to meet with at a public house, in whose society they had remained boozing till the next morning; and that, as they were proceeding homewards over the common, they there found the clothes and the bloody knife,—circumstances which had raised such cruel and unfounded suspicions. — This explanation, though correct, was by no means satisfactory, and the two prisoners were remanded, and an investigation as to the validity of their defense was set on foot by the magistracy. The truth of the first part of the story they told was confirmed; namely, their having carried a sick person from Edinburgh to Musselburgh, and also their having

received something more than their fare; but as to the *strangers* with whom they alleged they had spent their money, and remained in company all night, although there were but few public houses on the way; yet, whether from fear, or with sincerity, each of the landlords positively denied having seen or entertained them. The unhappy men were therefore fully committed to take their trial for murder. One of them, the father of three children, died a few days afterwards in prison; whether from prior disease, from ill treatment by the mob who met them upon the common, or of a broken heart at so horrid a charge, and no visible means of repelling it, is not stated. In consequence of this calamity, the widow and children were sent to the poor-house, overwhelmed by want, no less than by unmerited ignominy.

A diligent search was perseveringly made to find the body of the supposed murdered man, whose sorrow-stricken wife offered an additional reward of five guineas to any person who could discover where it was concealed; but all to no purpose. It appeared upon inquiry that Mr. Mirelees had dined at Haddington, where he received twenty-five pounds; and that, as he said, he set off for home about three o'clock in the afternoon. About half-

past five he called at an alehouse at Musselburgh, situated on the merge of the heath where the dead mastiff was found, and where the two chairmen declared they had picked up the garments and knife, and drank some brandy and water; but no one could trace him any further, although this place was not more than five miles distant from his own house. The surviving chairman remained in prison, prejudged by the popular voice as being guilty of the murder, and also of having in some unaccountable way concealed or destroyed the body of the man whom he stood accused of having robbed and murdered. In this state of doubt the affair remained about five weeks, when the fullest possible evidence was obtained of the innocence of the two chairmen, by the sudden and unexpected re-appearance in Edinburgh of Mr. Mirelees himself,—in perfectly good health,—not a drop of whose blood had been shed; nor had he, as was supposed, been stopped or robbed on his way home. For as Mr. Burton, an Edinburgh tradesman, who had been purchasing goods at Sheffield, was returning to Scotland, calling to dine at an inn at Leeds in Yorkshire, as he passed through the kitchen, to his utter amazement he there saw Mr. Mirelees sitting very composedly smoking his pipe. It may well

be supposed that Mr. Burton's astonishment was so great, he knew not whether to believe his own eyes, or conclude it was the ghost of Mr. Mirelees whom he thus unexpectedly beheld living, and whom he so firmly believed to have been murdered; but he was soon relieved from doubt and terror by the well-known voice of his old friend Mirelees, saying as he arose, "*Eh! Mr. Burton, how do you do?*" The latter, in almost breathless astonishment, took him by the hand, and instantly communicated all the consequences that had arisen from the hour of his disappearance,—the arrest of the two chairmen upon suspicion of having murdered him; the death of one, and the imminent peril of the other of being condemned as his murderer when brought to trial. At these communications Mirelees appeared alike shocked and surprised; and upon Mr. Burton proposing they should travel post to Edinburgh, in order to save the surviving chairman from further suffering and peril, as well as to relieve the sorrow of Mrs. Mirelees, he readily consented. Upon the arrival of Mirelees alive and well in Edinburgh, it was a matter of some difficulty to persuade his wife to approach him, so strongly was she impressed with the belief it must be his ghost. The tidings of the safe return of the man whom so

many had mourned as dead, and the wild and incoherent account he gave of the cause of his disappearance, instantly changed the current of public sympathy, and the poor weavers became objects of general commiseration. Finding himself an object of suspicion and aversion, Mirelees had the hardihood to make an affidavit the day after his arrival, of the following tenor—viz: "That soon after he left Musselburgh, he was met on the road by two gentlemen in a post-chase, who ordered him to stop, and he making some resistance, they stabbed his horse and his dog, and by force dragged him into the carriage; that they halted at several towns upon the way to change horses, but would not suffer him to come out the chaise, nor did he ever know where he was till they told him he was at the Black Swan at York. That they kept him confined at that inn three days, and afterwards carried him thence at midnight, and set him down in the midst of a forest, and he never saw them afterwards;—that they did not demand his money, but treated him with part of whatever they had for themselves." This affidavit being published, so far was it from answering his expectations, Mirelees found the odium he labored under increased by the incredibility of his allegations; the poor chairman was,

however, immediately liberated, and his character fully restored. If the Chief Justice had not been absent from Edinburgh, he would, no doubt, have caused Mirelees to be taken up immediately on his return; as it was, as soon as a copy of this extraordinary affidavit reached him, his lordship issued his warrant for the apprehending of Mirelees as an impostor. The villain having, however, a keen sense of the danger he was in from the contempt and abhorrence which his person and his story every where experienced, absconded once more, and was seen at Campvere, a seaport in Dutch Zeeland, in April, 1756. Knowing himself to be out of the reach of British jurisdiction, he refused to make any other confession. It is, however, of little moment what his motives were for acting in so strange and so cruel a manner; the great interest connected with the case being the danger in which two innocent persons stood of being condemned and executed as robbers and murderers from the force of circumstantial evidence.

XXXIII.

Case of Taantje.

In the anxiety of legislators to strike terror into the hearts of servants, by inflicting the most appalling punishments upon domestics who are accused of robbery or murder, much of the injustice of convicting and punishing upon circumstantial evidence, both at home and abroad, has arisen. It is scarcely possible for an accused menial to have a fair trial, so powerful is the prejudice which exists against him; and as each of the jurymen is commonly the master of more than one servant, and naturally anxious to intimidate *them* by the severity of punishment awarded to others, the court and jury might, without injustice, be described as generally feeling a stronger solicitude to prevent the acquittal of a guilty prisoner, than the erroneous condemnation of one that is innocent. When a foreigner is tried in Great Britain for murder, he is permitted to have a jury comprising half its complement of foreigners; and when a domestic servant is to be tried for murder or felony committed in the

house or upon the person of a master or mistress, it would be but an act of moral justice to summon upon the jury a moiety of housekeepers who have irreproachably served fourteen years and upwards in the capacity of domestic servants. As long as this concession is wanting, a *servant* cannot be said to be tried by his *peers*. On the contrary, he is tried by a judge and a jury much too prone to take up the worst side of the question. If Elizabeth Fenning had been tried before a jury thus composed, it is all but impossible she could have been found guilty upon such vague and dubious evidence as was produced against her. I think it was Paley who said, in some of his essays, "that the evil of an INNOCENT person put to death upon a false charge is often more than counterbalanced by its *beneficial effect* to society, in operating as an example, and thereby *preventing* crime." A truly Turkish axiom this, and disgraceful to his memory.

It has already been observed how tenacious the criminal tribunals of the Netherlands formerly were, and probably are yet, of taking life away; and also that circumstantial evidence was never permitted to go farther than led to the confinement of the accused during life, or until decisive evidence of guilt or innocence could be obtained. In

the first ages of the Belgic republic, the number of criminals was very small, and the patience and diligence with which their rechters or judges sought into the merits of every case, was most praiseworthy and exemplary. But whenever a sentence was once pronounced, it was rigidly executed, *no pardon being ever granted.* As the usual effects of wealth and luxury became apparent, the current of justice grew turbid and impure, the laws more cruel and sanguinary, and that terrible engine of despotism, *the rack*, was resorted to in all cases where *suspicion* predominated, or where the prisoner had the misfortune to be an object of fear and hatred to private and powerful enemies, who might chance to thirst after an opportunity of sacrificing him to their resentment. As commercial wealth increased, public and private morals grew more and more polluted, and the administration of justice more and more corrupt. It was in this state of things that the condemnation of accused persons upon circumstantial evidence, and also upon confessions forced from them by torture, became an ordinary practice.

Amongst the many instances that are recorded in the annals of Belgic jurisprudence of the lamentable effects of ignominious punishments, inflicted by

virtue of sentences founded upon circumstantial evidence alone, the case of a servant-woman, who lived in the family of a principal inhabitant of the city of Delft, is, perhaps, one of the most remarkable. She had lived many years in the family, and in all that time her conduct had been irreproachable. It happened, however, one Sunday, when the master, mistress, and all the household, alone excepting this servant, had gone to a place of worship, that the house was robbed, and a small cabinet containing jewels and gold coin to a very large amount stolen and carried away. On the return of her mistress, she went to deposit some trinkets that she had worn at church in that repository, as was her usual custom, which led to the detection of the theft. And as the lady had taken the jewels from the cabinet but two hours before, when the other valuables were all safe, it proved that the crime had been committed whilst the master, mistress, and family were at church.

When Taantje was questioned respecting the admission of any person into the house during their absence, she asserted in the most positive manner that no one had come in or gone out. She appeared extremely affected at the incident, looked pale, wept and trembled, all which symtoms were

construed as unequivocal marks of guilt. When further questioned, she merely repeated her first declaration, namely, that she had not opened the door to any one during their absence,—that it had not been opened,—that she had not committed the robbery, was not privy to it, and constantly ended her discourse by appealing to a just God to attest her innocence, and bring the ral criminals to punishment.

A neighbor deposed that during the time the family were at church he heard the back-door open and shut very gently, and some steps as of a person going out. These facts Taantje positively contradicted, alleging that those persons must have been deceived; that no person could have come in, or gone out, unknown to her, and she had not the least consciousness or belief that any person had been concealed in the house.

The chief man-servant made oath that he had, the overnight, as was his usual custom, locked up the lofts or garrets, left the keys outside, and had found them in the same state in the morning. Other servants made oath of having seen the cabinet in the chamber where it usually stood when the family went to church. It was therefore concluded by the magistrates, as well as by her master and mistress,

that the person who had been heard to *quit* the house, during their absence at church, was a confederate of the female servant who had been left in charge; and that, after Taantje had stolen the cabinet, it was conveyed away by an accomplice.

A Lutheran minister, who visited the family, took great pains to prevent the poor woman being sent to prison. He urged the *possibility* at least of *some* person acquainted with the habits of the family, and the plan of the house, secreting himself, and who might, however improbable it appeared to them, have committed this important robbery, wholly unknown to poor Taantje, whose whole life gave a flat contradiction to the imputation of dishonesty. The good man further argued in her favor from the known sobriety of her demeanor,—her having no lover, no followers, and scarcely any other acquaintance or associates than her fellow-servants. But all was in vain. Useless were the torrents of tears that she shed, or the supplications she uttered. To the usual place of confinement for female felons she was consigned; and the judges by whom the case was heard, making up their minds that she was guilty, and being excessively fearful of *encouraging similar crimes in others*, if they failed to treat her in the most severe

manner allowed by law,—condemned her to undergo the torture both ordinary and extraordinary, to wring from her the name and residence of her accomplice. Upon hearing this sentence, the poor woman fell on her knees, supplicating of God, if he saw it good she should suffer unjustly, to endow her with fortitude to meet the agony to which she was doomed, without its forcing her to make a false confession; to forgive her judges, who, she said, knew not what they did; and to bring the real delinquent to justice, that her character might be vindicated, and her innocence of the crime imputed to her made manifest. In this her utmost distress she was attended and consoled by the benevolent minister;—he stood by her side when she was tortured, and he bore testimony to her constancy in enduring the dreadful punishment, when every joint in her body was, one by one, dislocated, and also her unremitting protestations of innocence; but every thing was construed as emanating from obdurate wickedness, and refinement of criminality. And the miserable creature, when reduced to a state of incurable decrepitude by a cruel and speculative process, was condemned to twenty years confinement and hard labor in the house of correction at Delft.

Under all these terrible inflictions, so meek, pious, and resigned was the conduct of the innocent sufferer, that the chaplain, keepers, and medical and other visitors of the prison, were struck with admiration, so much so that a powerful opinion became formed that she *must* be innocent. And ultimately, her master, touched with sorrow and remorse, made application for a remission of the unexpired part of the term of her imprisonment, upon the ground that he believed she was innocent of the crime for which she had so cruelly suffered. He was asked if he meant to take her again into his house? to which question he replied in the affirmative; and Taantje, after many years of suffering, was once more restored to her old home;—but she was now a cripple and forced to use crutches to be able to move from one place to another. Her master made her a handsome present towards securing her an annuity for life; and the good priest who had so strongly defended her, exerted himself so successfully, that a benevolent fund was raised sufficient for her frugal support, if circumstances should occur depriving her of her asylum in her contrite master's house, and he should neglect to make provision for her future support.

In this peaceful manner, grateful for the favors

her master's hand bestowed, and freely forgiving all she had suffered through his prosecution, when an event occurred which led to the detection of the real criminal, and relieved poor Taantje even from the shadow of suspicion. It happened thus:

As Taantje, pursuing her former occupation as principal housemaid, went out occasionally into the city, a place of small extent compared to Rotterdam or Amsterdam; and one day, as she was passing through the principal flesh market, a butcher tapped her on the shoulder, and said in a half whisper, and an ironical tone of voice, "*Ah! what a creature is a naked woman!*" She felt as if electrified by those words; the recollections excited by which almost overpowered poor Taantje. Her shattered limbs shook, and she had the utmost difficulty to avoid dropping down upon the pavement; for she was conscious that, as she changed her linen on the Sunday morning when her master's house was robbed, and whilst the family were at church, she had uttered that very exclamation, and never on any other occasion. She also recollected that this individual had, that very morning, brought some minced veal;* hence it instantaneously

* In Holland the butchers chop meat of all kinds, if rquired, like sausage meat. It is called "*Gehaakt Vleesch.*"

struck her that this man had contrived to conceal himself in the solders or garrets, where he had overheard her utter the words he had then repeated; and availing himself of her being entirely undressed, he crept down the back-stairs, stole the cabinet from her mistress's room, and let himself out at the back-door, as before mentioned.

Filled with the belief that her prayer was at length heard, poor Taantje hastened home, and seeking her master, in a tremulous tone she related all that had occurred, and every circumstance connected with it. When he had heard the whole she had to say, he enjoined the strictest secresy; and so strongly was he affected by her artless tale, and the pungent recollection of the tremendous injustice he had dealt out to his innocent and faithful servant, that the tears trickled rapidly down his furrowed cheeks; and taking her by the hand, and kneeling before her, he said he feared neither God nor his neighbors would forgive his hardheartedin having persecuted her as he had done. Poor Taantje was less able to bear this humility and contrition than she had been his pride and cruelty; and with a nobleness of soul that would have reflected honor on the highest station in life, she insisted on his rising, and strove to reconcile him to

himself by admitting and expatiating upon the weight of unfavorable circumstances by which she was then oppressed and borne down.

Without a moment's delay her master hastened to the house of the senior burgomaster, and communicated the singular facts he had just learned from the lips of Taantje. His opinion too was that the butcher was the robber, an idea that was strengthened by the corroborating facts, that when the robbery was committed the suspected individual was a journeyman, and in less than a year afterwards he commenced business on his own account, and had lived ever since in a more expensive manner than his trade seemed competent to support. The magistrates next made inquiries as to his relations and most intimate connections; and when every preliminary step was taken that was deemed expedient, the burgomasters and other magistrates caused the suspected person to be arrested, and his premises searched. The penitent master of poor Taantje and her fellow domestics assisted; and so suddenly was the measure executed, there was neither time nor opportunity to remove or conceal a single article. It was not, however, till after a long and laborious search they found any thing that in the least degree corroborated their suspicions. At

last, under the iron hearth of the best bedroom there was found a small box containing many valuables, which were at once identified as the property of Taantje's master and mistress, and which were stolen on the Sunday morning named. And thus, at the distance of fourteen or fifteen years from the time when the robbery was committed, and when the criminal deemed himself in absolute security, his own malignity and stupidity were made the instruments of his detection and punishment. When it was known outside the house, what had occurred within, the populace would have killed the delinquent, and leveled his dwelling with the earth, but for the presence of the burgomasters and magistrates, and their solemn assurance the criminal should be brought to speedy justice. The populace exclaimed in the bitterest terms of reprobation against the master and mistress of the innocent and injured servant, and the judges by whom she had been tortured and condemned. Nor was the tumult quelled till the presiding magistrates appeared in the front of the stadthouse, and again assured the indignant citizens that prompt justice should be done to every party; and that the master and mistress of Taantje had already rendered her every atonement in their power make—had obtained her release

from confinement—had supported her in a kind and comfortable manner—and assisted largely in providing for her future support. Lastly, the speedy trial and punishment of the butcher, if found guilty, was that part of the concessions to popular feeling which had the greatest effect in restoring tranquillity. As to the butcher, he evinced the utmost hardihood and callosity of heart till the concealed trinkets and jewelry were found, which he had abstained from selling, lest it should lead to his detection; for, exclusive of the jewels, he had stolen two thousand ducats in gold. When the searchers observed that the hearth-iron seemed as if it were movable, the villain was seen to turn pale; and when the dienaars* found it moved, and began to force it up from its place, the delinquent made an effort to draw his knife, apparently with the design to cut his way throught the hostile group that surrounded him thus, and make his escape, or perish in the attempt; but this effort had been foreseen and guarded against, and ere he could do any mischief, his arm was arrested, the weapon taken from him,—he was bound with strong cords, and conveyed to the strongest dungeon in the city prison amidst the groans and execrations of the populace; where,

* Police officers.

seeing certain death before his eyes, his cruel heart relented, and he made the following confession, viz.

That his master served the master of Taantje with butcher's meat for his table, which he used to carry —that the year before the robbery took place he had courted a servant maid, then living in the house, through his intimacy with whom he acquired a knowledge of the upper rooms, and of the lady's jewels and money being kept in the cabinet he afterwards stole. The girl, he said, supposed he meant to marry her, and he fully exonerated her from all knowledge of, or privity to, his design of stealing the cabinet. Some time afterwards she was discharged, and their intercouse ceased; and then he began to devise means of executing his design, but never had an opportunity till the morning in question, when, having forgot to take some minced veal home on Saturday evening, as he should have done, he carried it in a large basket on Sunday morning. The family were gone to church—Taantje was up stairs, and setting the meat in the usual place, he pretended to go directly out, and to shut the door after him, instead of which he shut himself in, and pulling off his shoes, crept softly up to the turf solder or garrets, waiting for Taantje coming up to the maid's garret to change her dress. The unsus-

pecting woman, unconscious that any human being was near her, being entirely undressed, and contemplating her naked figure, uttered the singular exclamation already noted, which, being plainly overheard by the villain in ambuscade, he immediately sallied forth, and descending by the back stairs, found the doors unlocked, and putting the cabinet into the basket, and covering it with a cloth, the streets being clear, he reached his lodgings unperceived or unnoticed. Upon opening the box, and finding how rich a booty he had obtained, he resolved to conceal the jewels, and pretending that a relation had lent him a small sum of money, to begin business, and commence trade upon his own account. He said he felt great sorrow and compunction for the sufferings of Taantje, the truth of which may be questioned, since he never offered her the least consolation or relief in the midst of her sufferings. And when a conviction of her innocence operated so powerfully in her favor as to induce a subscription in her behalf, the miscreant had not the grace to dedicate to her use any part of the ill-gotten store he had obtained at the cost of her unmerited disgrace and sufferings.

As to Taantje, her meekness and humility remained unaltered after this complete vindication of

her character. Her master was so bowed down by the odium occasioned by his severe proceedings against her, which his subsequent benevolence could not remove, nor the soothing discourse of Taantje mitigate, that he retired to Utrecht with his wife and family. The delinquent was condemned to be broken alive on the wheel. According to the custom of the Dutch, his sentence was pronounced under the canopy of heaven, and not in any edifice, or under any roof; a custon derived from ages very remote, and intended to show that the judges wished their actions should be open and solemn, as if transacted in the presence of the deity. And so vivid were the recollections of Taantje of the horrible tortures she had endured, that on the day of his execution she seemed as if she was again extended on the rack, and her joints all dislocated, one by one. Next, before the highest tribunal in the state, the proceedings of the local tribunal were revised, the result of which was that the presiding judges were all removed from their stations, declared disqualified ever to act again in that awful capacity, and the city was condemned to pay the poor sufferer a considerable fine, because the magistracy had not caused the real thief to be apprehended and his premises searched, when it was proved that he had

been on the premises during the absence of the family on the morning of the robbery, and due pains had not been taken to ascertain if he had not concealed himself in the house, and committed the robbery for which the female in question had been falsely accused and unjustly punished.

XXXIV.

Case of a German Boor.

AMONG cases, foreign and domestic, whose moral tendency demonstrates the cruelty and folly of trusting so far to appearances, however strong, as to take away life, or declare a man infamous, this case of a poor husbandry laborer, who about half a century since was beheaded at Haarlem, not more than ten miles distant from Amsterdam, and a city celebrated as the birth-place and residence of Laurens Coster, conveys an excellent moral. This poor man was a Westphalian boor or clown, who was pursuing his way to Amsterdam in search of more profitable labor than his own country afforded. It happened that the party of emigrants with whom he had traveled, stopped to drink at a road-side house in Haarlem wood, where he soon became so completely intoxicated that they laid him under a tree asleep, and left him to get along as he could when he became sober.

Great was his terror, and inexpressible his amaze-

ment, when, upon awaking, the poor wanderer saw about him a number of men, dressed in blue, and wearing silver-hilted swords, and hearing himself accused of having robbed and murdered a merchant; and greater still was his horror and affright on seeing that the blade and haft of his knife were besmeared with blood—that his right hand was bloody, and that in his pockets were found property which was known to have belonged to the murdered man. The terror and confusion he manifested, and which was so natural to his condition as an innocent man, were interpreted as unequivocal proofs of guilt. His protestations and supplications were alike disregarded. His country, and his poverty, combined to render him a subject of reproach and derision; for the indigent German laborers were no less subject to insult and to wrong in Holland, than the poor Irish are in England. After many months close confinement the unhappy man was condemned to die by being beheaded,* after having been put to the tor-

* About the year 1808, a Dutchman, by trade a pork butcher, residing near the Admiralty, in Amsterdam, murdered his wife, and then strove to conceal himself by flight. He was however taken, tried, and condemned to die by the sword. When the criminal was brought upon the scaffold, he could not be induced to kneel down, with his eyes covered, and his head erect, and arms pinioned, but plunged so violently it was found impossible to behead, without first killing him. It caused no small confusion to the judges, who, in Holland, are compelled to witness the execution of the sentences they pronounce. At

ture to make him confess his crme and his accomplices.

The probability of the assassins having found the poor German drunk and fast asleep, of having stained his knife and hand with blood, and put into his pockets a part of the spoil they had taken from the merchant they had just murdered; and the improbability that a person capable of committing such a crime falling asleep by the highway side, his hands and arms besmeared with blood, and the property in his pockets, were all overlooked. The companions of the accused appeared in his behalf, and they proved he was dead drunk, and neither able to stand or go when they left him in the wood. The public prosecutor contended that he had arisen in a state of frenzy—had robbed and murdered the merchant, and being unable to proceed, had staggered back to the tree where they had deposited him, and was there taken. The result was,

length, after the loss of half an hour's time, the executioner put a cord round his neck, and he submitted quietly enough to be hung. A Mr. Humphries, a well known London *collector* of books and prints, under the signature "*Londonienis*" wrote a humorous article, which was inserted in the Rotterdam paper, in which, having heard that the criminal was a staunch *republican*, he said, he was resolved to go out of the world with his head on, and that he continued to the last, like the Batavian republic, "*one and indivisible.*" It was the only capital execution that occurred in Amsterdam, a city containing 300,000 inhabitants, in the course of three years.

the poor man was condemned to die, and suffered death by beheading.

The fate of the poor German was forgotten, when, upon a gang of desperate robbers and murderers being detected and apprehended in Gelderland, and just as they were led out to execution, two of them confessed having committed the crime for which the poor German had suffered a wrongful death at Haarlem. The criminals, in their joint confession, stated that as they were waiting the arrival of the merchant in a herberg or inn in Haarlem wood, whom they knew would pass along near about that time, on his way from the Lemmer to Amsterdam—that they noticed the German boors, and the very drunken state of one of them whom the rest of his comrades left dead drunk under an oaken tree; that after they had murdered the traveler, and plundered his person, events which took place only a very short distance from the spot where the unfortunate German lay asleep, one of the banditti suggested the horrible expedient of staining his hands, his garments, and his knife, with the yet reeking gore of the slain; and putting into his pockets a few of the least valuable trinkets found upon him. And so hardened were those wretches, it appears they were present at his execution. On this account it is

said Haarlem city lost the privilege of ever more having its own executioner, a proper stigma upon the negligence and prejudice which led to the execution of an innocent person.

XXXV.

Case of a Dutch Servant Maid.

ANOTHER instance may be cited of a diabolical project, devised and executed by a vindictive lady, residing at Vlissingen, in Zealand. She had a servant girl against whom she took up so vehement a hatred that nothing less than her total destruction could appease her. Animated by this savage feeling, she found a key which opened the girl's box, into which she placed a small gold cup, some silver spoons, pieces of lace, and other articles which she could identify as her property; and then went before the magistrates, making oath that she had lost the cup, a necklace, and other jewels, as well as some small pieces of plate, and obtained permission to search her box and person, The poor girl was thunderstruck at the accusation. Confident of her innocence of the imputed crime, she openly accused her mistress of perjury, eagerly led the police officers to the box, which she opened with short-lived exultation, for, at the bottom, and carefully folded up in her garments, various articles belonging to her

mistress were found, but neither the gold cup, nor diamond ear-rings and necklace. If a huge serpent had sprung from the box and coiled itself in her bosom, the affrighted maid could not have expressed more horror; she shrieked, rather than said, "My mistress put it there—my mistress put it there—I am innocent! I am innocent!" These exclamations were, however, attributed to artifice, and she was committed to prison, tried, and condemned to be flogged on the public scaffold, brand-marked, and imprisoned twelve years in the Spin house, which sentence was rigidly executed. The excellent character of the girl, and some dark spots in the character of the mistress, coming to the ears of Ploos Van Amstel, who was, in his day, the Garrow of Amsterdam, he visited the prison, and hearing a most favorable report of the unhappy girl's conduct, he saw and spoke to her, whose firm, plausible, modest, consistent manner, impressed that celebrated lawyer with a strong belief that the mistress had acted as the prisoner declared. He therefore set confidential agents to work, to dive into her character, and he found it compatible with the girl's allegations. In the course of his researches he met with a poor char-woman, who made oath that she had seen the identical cup in the possession of the

lady, long after the punishment of the girl, and that the prosecutrix seemed greatly confused at the disclosure, and hastily put it out of sight. Upon the strength of this positive testimony the public-spirited advocate went to the presiding burgomaster and told him his suspicions, and exhibited his proofs, as he found a similar mistrust pevailing in the bosom of that magistrate, and had little difficulty in attaining the reqnisite authority. To prevent any suppression of truth by bribery or other influence, the burgomaster connived at the lawyer himself, dressed as an inferior officer of justice, assisting in executing the measures that were resolved to be taken, in order, if possible, to detect the cup of gold and diamond ornaments in the possession of the prosecutrix. Whilst two parties of police officers, each headed by a magistrate, examined the town and country house of the suspected lady, Ploos Van Amstel proceeded to the humbler dwelling of a female relative who subsisted upon the bounty of the prosecutrix, and whose conduct in bearing testimony against the prisoner, and supporting the charges urged against her, had subjected her to many censures, and much opprobrium. The female who had sworn she had seen a cup which appeared to be gold, and exactly resembling the one

said to have been stolen by the prisoner, told the lawyer this female was then in the lady's house, and she thought the gold cup was more likely to be in her custody than the lady's. The police officers contrived to enter the house before they were perceived, and whilst the person of the female and her servant were secured, Ploos Van Amstel proceeded up to her bed-room; and there, in a recess formed for concealing smuggled goods, of which he had received private intelligence, he found a small box, in which were the identical cup and the jewels for stealing which the servant girl had been falsely accused and erroneously condemned, and suffered an infamous and terrible punishment. The surprise, terror, and confusion of the guilty woman in whose custody these articles were found, and whose false and suborned evidence had materially contributed to the condemnation of the accused, was excessive. She saw at one glance the abyss that yawned to swallow her, and forgetful of every thing but the hope of escaping, she arraigned the prosecutrix of having prevailed upon her to aid in her infernal projects against her servant maid.

Acting as a notary, Ploos Van Amstel took minutes of her confessions, which the magistrate witnessed, as well as the inferior officers. The mag-

istrates then went with the dienaars, to lodge the woman in the same prison where the poor girl was confined. Ploos Van Amstel proceeded to the town house of the prosecutrix, having in his possession the golden cup, the ear-rings, and the necklace, and the written confession.

When he arrived he found, of course, that the search had been unsuccessful; and the prosecutrix, too confident in a fallacious security, was menacing the magistrates with a prosecution for defamation, and was ordering the officers to quit her house. When she saw Ploos Van Amstel arrive, she fiercely exclaimed, "What other ruffian is come to ransack my dwelling?" "It is only Ploos Van Amstel, madame," said the magistrate, "who has been to examine a secret recess in the house of ———." In an instant, as if by the touch of magician's wand, all her arrogance vanished, and she would have falled senseless on the floor but for the humanity of the gentleman whom she had so insolently accosted. When then she opened her eyes, and recognized the well known features of that popular advocate, bearing in his hands the identical property she thought she had secured against every danger, her shrieks were piercing—her distress, indescribable —she tore her hair, threw herself at his feet, and

offered to resign half her fortune to the poor servant, and to quit the country for ever, if she could be exempted from public shame and punishment. But her depravity had been so rampantly displayed, and her conduct marked by such fiend-like cruelty, that the lawyer soon put an end to every hope, by ordering the officers to place her in a coach that was waiting, and convey her to prison to be dealt with according to law. At the same time the magistrates put their seals on the doors of the principal apartments, and left their officers in possession of the house. Having thus fully accomplished the object of his search, and having obtained an order of release for the innocent sufferer, that she might appear as an evidence against the newly made prisoners, the active and benevolent lawyer went to the public prison, where dressed in the female felon's garb, and pursuing her daily task of spinning an allotted quantity of flax, he found the pale, desponding, emaciated captive.

Ploos Van Amstel was too judicious to make the injured woman at once aware of the complete revolution that had occurred in her fortune. He began by telling her that the detection and punishment of her cruel and merciless mistress were events very near at hand, and subsequently her own restora-

tion to liberty and character was not only possible, but probable. She was at first incredulous; but when her deliverer assured her that he was *certain* of her complete triumph, and made her acquainted with his name and avocation, she was so violently affected as to be near fainting, and falling on her knees, her first action was to thank God that had raised her up a friend to make manifest her innocence. A heavy flood of tears succeeded; and when this seasonable relief of an overcharged heart had so far re-composed her agitated bosom, as to enable her to converse rationally, the jailer's wife walked in and invited the astonished sufferer to go with her into her house; and there she was requested to retire to a private room, to take off the prison dress, and put on the respectable apparel that was provided for her. Scarcely knowing what she did, and dubious if the whole was not a flattering dream, and fearful she should awake, and still find herself a wretched prisoner, she obeyed. So excessive, however, was the tremor that seized her nerves, it was deemed advisable to have her blooded. When she returned, dressed as a tradesman's daughter, she was apprised of her full liberation, and of the detection and confinement of her proud and unrelenting mistress; and as a confirmation of her good

fortune, her deliverer showed her the cup and the jewels she had wickedly and falsely been accused of stealing. Such was the result of the wicked machinations of a rich lady, against a poor servant girl. The city was fined in a very large sum by the States-general; and the servant maid, enriched and vindicated, became the wife of an opulent and respectable man; and the prosecutrix and her accomplice were condemned to *fifty years'* hard labor and close confinement, being the longest term of confinement allowed in Holland, from an affected abhorrence of condemning any one to perpetual incarceration.

XXXV.

Case of a Negro Murderer.

A NEGRO, who had run away from from his master in South Carolina, arrived in London in an American ship. Soon after landing, he became acquainted with a poor, honest laundress, in Wapping, who washed his linen. This poor woman usually wore two gold rings on one of her fingers, and it was said she had saved a little money, which induced this wretch to conceive the design of murdering her, and taking her property. She was a widow, and lived in an humble dwelling with her nephew. One night her nephew came home much intoxicated, and was put to bed. The negro, who was aware of the circumstance, thought this would be a favorable opportunity for executing his bloody design. Accordingly, he climbed up to the top of the house, stripped himself naked, and descended through the chimney to the apartment of the laundress, whom he murdered—not until after a severe struggle, the noise of which awoke her drunken nephew in the adjoining room, who got up and hastened to the

rescue of his aunt. In the mean time the villain had cut off the finger with the rings; but before he could escape, he was grappled with by the nephew, who, being a very powerful man, though much intoxicated, very nearly overpowered him; when, by the light of the moon, which shone through the window, he discovered the complection of the villain, whom (having seldom seen a negro) he took for the devil. The murderer then disengaged himself from the grasp of the nephew, and succeeded in making his escape through the chimney. But the nephew believed, and ever afterwards delared, that it was the devil with whom he had struggled, and who had subsequently flown into the air and disappeared. The negro, in the course of the struggle, had besmeared the young man's shirt in many places with the blood of his victim; and this joined with other circumstances, induced his neighbors to consider the nephew as the murderer of his aunt. He was arrested, examined, and committed to prison, though he persisted in asserting his innocence, and told his story of the midnight visitor, which appeared not only improbable, but ridiculous in the extreme. He was tried, convicted, and executed, protesting to the last his total ignorance of the murder, and throwing it wholly on his black antagonist, whom he believed to

be no other than Satan. The real murderer was not suspected, and returned to America with his little booty; but he, after a wretched existence of ten years, on his death-bed confessed the murder, and related the particulars attending it.

XXXVI.

Case of Erroneous Execution for Murder.

A GENTLEMAN having been reveling abroad, was returning home late at night, but overcome with wine he fell down in the street, and lay there in a state of insensibility. Soon after, two persons, who were passing, having quareled, one of them, observing that the drunkard had a sword by his side, snatched it away, and with it ran his adversary through the body. Leaving the instrument sticking in his wound, he ran off as fast as he could. When the watchman of the night came in the course of his rounds to the scene of the tragedy, and saw one man laying dead, with a sword in his body, and another lying near him in a state of drunkenness, with his scabbard empty, he had no doubt whatever that the crime and the offender were both before him; and seizing the drunkard he conveyed him to prison.

Next morning he was examined before a magistrate; and being unable to remove the strong pre-

sumptions which circumstances established against him, he was committed for trial. When tried, he was found guilty, and immediately executed for the murder of which he was perfectly innocent.

The real criminal was some time after condemned to death for another offense; and in his last moments confessed how he had made use of the reveler's sword to execute his own private wrongs.

XXXVII.

Murder of a Father.

A MAN was tried for and convicted of the murder of his own father. The evidence against him was merely circumstantial, and the principal witness was his sister. She proved that her father possessed a small income, which with his industry enabled him to live with comfort; that her brother, who was his heir at law, had often expressed a great desire to come into possession of his father's effects; and that he had long behaved in a very undutiful manner to him, wishing, as the witness believed, to put a period to his existence by uneasiness and vexation; that on the evening the murder was committed, the deceased went a short distance from the house to milk a cow he had for some time kept, and that witness also went out to spend the evening and to sleep, leaving only her brother in the house; that returning home early in the morning, and finding that her father and brother were both absent, she was much alarmed, and sent for some of the neighbors to consult with them, and

to receive advice what should be done; that in company with these neighbors she went to the hovel in which her father was accustomed to milk the cow, where they found him murdered in a most inhuman manner; that a suspicion immediately falling on her brother, and there being then some snow upon the ground, in which the footsteps of a human being, to and from the hovel, were observed, it was agreed to take one of her brother's shoes, and to measure therewith the impressions in the snow; this was done, and there did not remain a doubt that the impressions were made with his shoes. Thus confirmed in their suspicions, they immediately went to the prisoner's room, and after a diligent search they found a hammer in the corner of a private drawer with several spots of blood upon it.

The circumstance of finding the deceased and the hammer, and the identity of the footsteps, as described by the former witness, were fully proved by the neighbors whom she had called; and upon this evidence the prisoner was convicted and suffered death, but denied the act to the last.

About four years after, the sister who had been chief witness was extremely ill; and understanding that there were no hopes of her recovery, she

confessed that her father and brother having offended her, she was determined they should both die; and, accordingly, when the former went to milk the cow, she followed him with her brother's hammer and in his shoes; that she felled her father with the hammer, and laid it where it was afterwards found; that she then went from home to give a better color to the horrid transaction, and that her brother was perfectly innocent of the crime for which he had suffered.

She was immediately taken into custody, but died before she could be brought to trial.

XXXVIII.

Case of Youth Betrayed.

A FEW years ago the green of a rich bleacher in the north of Ireland had been frequently robbed at night to a very considerable amount, notwithstanding the utmost vigilance of the proprietor and his servants to protect it, and without the slightest clue being furnished for the detection of the robber.

Effectually and repeatedly baffled by the ingenuity of the thief or thieves, the proprietor at length offered a reward of one hundred pounds for the apprehension of any person or persons detected robbing the green.

A few days after this proclamation, the master was at midnight raised from his bed by the alarm of a faithful servant, "there was somebody with a lantern crossing the green." The master started up from his bed, and flew to the window; it was so. He hurried on his clothes, and armed himself with a pistol; the servant flew for his loaded musket, and they cautiously followed the light. The person with the lantern (a man) was, as they ap-

proached, on tip-toe, distinctly seen stooping and groping on the ground; he was seen lifting and tumbling the linen. The servant fired; the robber fell. The man and master now proceeded to examine the spot. The robber was dead; he was recognized to be a youth of about nineteen, who resided a few fields off. The linen was cut across; bundles of it were tied up; and upon searching and examining farther, the servant, in the presence of his master, picked up a pen-knife, with the name of the unhappy youth engraved upon the handle. The evidence was conclusive; for in the morning the lantern was acknowledged by the afflicted and implicated father of the boy to be his lantern. Defense was dumb.

The faithful servant received the hundred pounds reward, and was, besides, promoted to be the confidential overseer of the establishment.

The faithful servant, this confidential overseer, was shortly afterwards proved to have been himself the thief, and was hanged at Dundalk for the murder of the youth whom he had cruelly betrayed.

It appeared, upon the clearest evidence, and by the dying confession and description of the wretch himself, that all this circumstantial evidence was preconcerted by him, not only to screen himself

from the imputation of former robberies, but to get the hundred pounds reward.

The dupe, the victim, he chose for his diabolical purpose was artless, affectionate and obliging. The boy had a favorite knife, a pen-knife, with his name engraved upon its handle. The first act of this fiend was to coax him to give him that knife as a keepsake. On the evening of the fatal day the miscreant prepared the bleach green, the theater of this melancholy tragedy, for his performance. He tore the linen from the pegs in some places, he cut it across in others; he turned it up in heaps; he tied it up in bundles as if ready to be removed, and placed the favorite knife, the keepsake, in one of the cuts he had himself made.

Matters being thus prepared, he invited the devoted youth to supper, and as the nights were dark, he told him to bring the lantern to light him home. At supper, or after, he artfully turned the conversation upon the favorite knife, which he affected with great concern to miss, and pretending that the last recollection he had of it, was using it on a particular spot of the bleach green, described the spot to the obliging boy, and begged him to see if it was there. He lit the lantern

which he had been desired to bring with him to light him home, and with alacrity proceeded upon his fatal errand.

As soon as the monster saw his victim was completely in the snare, he gave the alarm, and the melancholy crime described was the result.

Could there have been possibly a stronger case of circumstantial evidence than this? The young man seemed actually caught in the act. There was the knife with his name on it; the linen cut, tied up in bundles; the lantern acknowledged by his father. The time, past midnight. The master himself present, a man of the fairest character; the servant, of unblemished reputation.

XXXIX.

Case of Martin Guerre.

MARTIN GUERRE was, at the age of eleven, married in January, 1539, to Mademoiselle Bertrande del Rols, of Artigues, of the same age. A certain provision was made for the wedded pair, and in the ninth year of their marriage a third member was added to the group, by the birth of a boy, who received the name of Sanxi.

But a cloud now gathered over the domestic sky. Martin was tempted to appropriate to his own use some wheat belonging to his father, and fearing the latter's displeasure, absented himself from home until the matter should blow over. Eight days were assigned — between Monsieur and Madame Guerre — as the probable period for this; but as many *years* actually did elapse before Martin was again seen, and during the whole of that time no token of his existence cheered his wife and child.

At length, one winter's evening, a traveler, claiming to be Martin, suddenly presented himself, and declared that he had returned a penitent man, re-

solved to atone by every office of affection and conjugal duty for the anxiety and distress he had occasioned.

Not the least question of the visitor's being indeed Martin Guerre seems to have occurred to anybody. His own four sisters, his uncle, and every member of his wife's family then at hand, acknowledged him without an instant's hesitation. And no wonder; for not only was the newly-arrived identical in form and feature with Guerre, but he showed himself familiar with circumstances which could be known only to the latter.

Madame Guerre, whose attachment to her lord had never wavered or diminished in his absence, received his representative with every token of the fondest affection; returning to her quiet wifely habits as before, and in the period of three years during which they lived together, presenting the supposed Martin with two children, one of whom, however, died in infancy.

Whether or not the wife ever suspected that she was the victim of a daring imposture can never be ascertained. It was deemed impossible that some or other of those almost imperceptible yet positive differences, that must always exist between man and man, should not have at times awakened her

suspicions. The probability is that they did so; and that her continued acquiescence in this singular connection was the result partly of personal liking for the man who enacted his *role* of husband with a tenderness and fidelity the original did not, and partly from a conviction that, impostor as he might be, her peace and respectability would be best consulted by keeping her own counsel and his.

What circumstance prompted the first attempt to investigate the matter was not distinctly known. It was, however, at the pressing instance of Pierre Guerre, an uncle of the missing man, and other connections of the family, that Bertrande was at length induced to invoke the vèngeance of the law on her pretended spouse. He was thereupon arrested, and before the Court of Rieux Bertrande accused him of falsely and treacherously personated her husband, Martin Guerre, and demanded that he should be condemned to do penance in the usual public form, should pay a fine to the king, and make compensation to herself in the sum of ten thousand livres.

The accused made an eloquent defense, maintaining stoutly his identity with Martin Guerre. He then explained the causes of his prolonged absence, giving a minute and circumstantial history

of the seven or eight years, during which he had served as a soldier, passing afterwards into the service of the king of Spain. Consumed with the desire once more to see his wife and son, he had at length wandered back, browned and bearded, to the village he had left a smooth-cheeked boy. Pierre Guerre, that very uncle who now sought his ruin, was the first to recognize him, and only changed in his demeanor when he—the accused—requested an account of the moneys he had, as agent for Martin Guerre, administered in his absence. His uncle had even attempted his life, and it was only through the energetic interposition of his wife that he had been protected from mortal injury.

In the severe interrogatory to which he was subjected, he replied without hesitation and with unfailing accuracy to every question of family history; naming the time and the place of the birth of Martin Guerre, his father, mother, brothers, and sisters, and even more distant relations; the day, month, and year of his own marriage; the parties present, or otherwise associated with the marriage; the dresses of the guests, and a multitude of special incidents which occurred on that and the preceding day. He spoke of Sanxi, his little son, and next

his departure, journeyings, the cities he had visited in France and Spain, and the acquaintance he had made there; furnishing the names and addresses of those who could most readily confirm his narrative; and unquestionably leaving a very strong impression in his favor on the minds of his hearers.

The testimony of his wife Bertrande corroborated all the statements of the accused, so far as they came within her knowledge; but she positively denied his identity with her husband.

The court now ordered that an inquiry should be instituted into the conduct of Bertrande during the absence of her husband, and into the character and repute of the witnesses who so persistently pursued the accusation. The result was satisfactory.

On the resumption of the trial there were summoned no less than one hundred and fifty witnesses. Of these, *forty* declared on oath that the accused was unquestionably the long-missing Martin Guerre. They had been his intimate companions in his boyhood and youth, and their conviction was strengthened by the recollection of certain marks or scars, which time had not effaced.

On the other hand, a great body of witnesses as positively declared that the accused was *not* Guerre,

but one Arnaud du Tilh, called "Pansette," with whom some, at least, among them had been acquainted from the cradle. The remaining witnesses, sixty in number, affirmed that so close was the resemblance they dared not pronounce an opinion.

The court now ordered that young Sanxi Guerre should be produced and compared with his alleged father. A formal report declared that there existed no resemblance; a second report averred that, on being compared with the sisters of Guerre, the boy's face exhibited an unmistakable likeness.

Greatly to the public surprise, the process resulted in the conviction of the accused. As Arnaud du Tilh, he was pronounced guilty of the alleged offense, and sentenced to decapitation. Appeal being made on his behalf to the parliament of Toulouse, the higher court decided that the matter had been insufficiently weighed, decreed a new trial, and ordered that Pierre Guerre and Bertrande should be successively confronted with the accused.

The confrontation, however, produced nothing, though it is recorded that the bearing of the accused, calm and confident, contrasted favorably with the downcast looks of his opponents.

Thirty new witnesses now appeared upon the

scene. Of these, ten declared him to be the true Martin Guerre, seven or eight decided in favor of Arnaud du Tilh, and the remainder refused definitely to give any opinion on the matter.

On summing up the testimony, it resulted that forty-five witnesses declared the accused to be no Martin Guerre, but Arnaud du Tilh. Among these were several who had passed years in the latter's company, while the character of these deponents sufficed to place their evidence beyond suspicion.

The principal witness was maternal uncle of Du Tilh, one Carbon Bareau, who at once recognized his nephew, and seeing him in fetters, burst into tears at witnessing the disgrace he had brought upon the family. Other witnesses had been present when Arnaud du Tilh had executed certain deeds, &c., and these instruments were produced in corroboration.

All of them agreed in describing Martin Guerre as taller and darker than the accused, slender in body and limb, round-shouldered, with a high, divided chin, pendent lower lip, and squat (*camus*) nose, having the trace of an ulcer on one cheek, and a scar on the right eyebrow. Now, Arnaud, the accused, was short and stout, having neither humpy shoulders nor squat nose. It was singular

enough, however, that both the marks referred to as indicative of Martin Guerre were perceptible in the face of Arnaud.

The shoemaker of Martin Guerre deposed that the dimensions of his foot exceeded by one quarter that of the accused. Another witness alleged that Guerre was a skillful swordsman and wrestler. The accused was a novice in either art. Jean Espagnol, of Tonges, swore that the prisoner had revealed himself to him as Arnaud, but enjoining secrecy, and declaring that Martin Guerre had made over to him the whole of his possessions. Pelegrin de Liberos deposed that the accused had given him two handkerchiefs, to be delivered to Jean du Tilh, *his brother*.

Two other witnesses declared that a soldier from Rochefort, passing through Artigues, and hearing the accused called Martin Guerre, denounced him as an impostor; he himself having lately known the real Martin in Flanders, where he had lost a leg at the battle of St. Laurent, before St. Quentin. It is indicative of the wife's good faith in the process, that she had, through great difficulties, obtained a legal verification of the soldier's testimony.

Finally, numerous persons declared that Arnaud

du Tilh had from boyhood been a *mauvais sujet* of the worst description; a drunkard, a swearer, an atheist and blasphemer; a man, in short, "quoted and signed to do a deed of shame" such as that now imputed to him.

Such was the formidable case set up against the "claimant." Let us now hear his answer.

Nearly forty credible witnesses asserted that he was actually Martin Guerre, whom the greater part had known from infancy. Among these were his four sisters, with the husbands of two of the latter. Friends who had been present at his marriage with Bertrande de Rols confirmed their testimony; and the housekeeper who, on the nuptial night, bore to the new-married pair the little collation, called in courtly circles *media noche*, among burgesses *reveillon*, positively identified the accused as the bridegroom.

A great number of witnesses averred that Martin Guerre had two teeth in the left lower jaw broken, a drop of extravasated blood in the left eye, the nail of the left forefinger missing, and three warts on the left hand, one being on the little finger. *All these peculiarities existed in the accused.*

It was, moreover, proved that the prisoner, on

arriving at Artigues, recognized and saluted as old friends all those who had been intimate with Guerre; that in conversation with his wife he recalled to her memory incidents which could have been only known to herself and husband; and it was stated, by way of illustration, that Madame Guerre having mentioned that she had preserved certain chests unopened, he desired her to fetch from one of them a pair of white pantaloons folded in taffeta. The garment was found as he had described.

With regard to the dissimilarity in appearance between the men, it was urged that a very considerable change must of necessity have occurred in Martin Guerre; nor was there anything remarkable in the slender stripling returning, after so long an absence, a stout and sturdy man; an alteration which, to the eye, would naturally diminish his stature.

The want of resemblance between Sanxi Guerre and the accused was pronounced to be of little value. How many sons might not be classed in the same category? The report of the soldier from Rochefort, being but mere hearsay, could not be accepted, the law expressly refusing credence to such testimony.

The indifferent character attributed to Arnaud du Tilh could not affect the accused, who claimed to be another man, Martin Guerre; and it was at least in evidence that his course of life during the four years that had elapsed since his return had been without reproach.

Lastly, the marvelous accuracy with which the accused assumed and maintained the character he claimed, transcended, his supporters alleged, human ingenuity. His acquaintance with dates, incidents, conversations, &c., &c., in the actual life of Guerre, was as inexhaustible as it was shown, by irrefragible testimony, to be correct.

Such was the conflict of reason and of evidence with which the judges of Toulouse were called upon to deal. All sources of information seemed to be now fairly exhausted. It was necessary to arrive at some conclusion; and the court were upon the very point of pronouncing the accused to be Martin Guerre, when there occurred an event so unexpected, so singularly timed, and so decisive, that the spectators may be excused for regarding it as a direct interposition of Heaven to overrule man's erring judgment, and avert a cruel wrong. The veritable husband — Martin Guerre — suddenly stumped into court, on the wooden leg described

by the Rochefort witness, and demanded to be heard.

Arrested and interrogated, he denounced the impostor—whose history he gave in detail—and demanded to be confronted with him. It was done; and a singular scene ensued. The accused—Arnaud du Tilh—in his turn denounced the rival husband, boldly declaring that he was willing to be condemned if he did not on the spot convict the latter of fraud and machination.

Maintaining the same arrogant tone, he then proceeded to cross-examine the other as to certain domestic incidents which ought to be within his knowledge. The answers were delivered with hesitation; and the impostor, if such he were, certainly displayed a more intimate acquaintance with Martin Guerre's domestic history than did that gentleman himself.

On examining the peculiar marks deposed to by the witnesses on the part of Guerre, these were found duly existing in the newly arrived man, although less apparent than in the other.

The first claimant was now withdrawn, and the second—he of the wooden leg—underwent a close interrogatory touching many domestic particulars which had not hitherto been submitted to either.

To these he replied with unfailing accuracy. But once more justice was at fault; for Martin Guerre the second, interrogated in his turn, replied with the like precision.

In despair the court now directed that the four sisters, the two brothers-in-law, and uncle of Martin Guerre, the brothers of Arnaud du Tilh, and the chief witnesses who asserted the latter to be Guerre, should appear together, and decide, once for all, which was the real man.

All obeyed excepting the brothers of Du Tilh, whom the court, with a consideration at that period somewhat rare, forbore to compel to give testimony which would probably affect the life of their relative.

The eldest sister of Guerre, who entered first, paused for an instant as if thunder-stricken; then, bursting into tears, fell on Martin's breast, and acknowledged him to be her brother. The rest followed suit; the witnesses hitherto most inflexibly against him passing one by one into the same view.

Last of all came Bertrande de Rols. No sooner had her eyes lit upon Guerre than, weeping and trembling, she threw herself at his feet — foot, rather — entreating pardon for having suffered her-

self to be betrayed by artifice into so great a fault. She laid part of the blame upon her sisters-in-law, who had so readily accepted the imposture, but more upon her own warm love for her absent husband, and that eager longing for his actual return which had contributed to the self-deceit. She averred that no sooner had she become conscious of her error than, but for the dread of God's anger, she would have concealed her grief and dishonor in the grave. In place of this she determined on revenge, and, as all the world knew, had pursued to the death the destroyer of her fame and peace.

The woman's natural manner, her beauty and her tears, sensibly affected the whole auditory, save only Martin Guerre himself. The stern reasoner declined to be moved by her passionate and soul-stirring words.

"Dry your tears, madam," he said, coldly. "They cannot and they ought not to move my pity. The example of my sisters and uncle can be no excuse for *you*. A wife must know her husband better than the very closest connections, and such an error as yours can only be made by one willfully blind. You—you alone—are answerable for what has befallen me."

The judges in vain attempted to soften the man's bitterness.

The records of this most extraordinary case do not describe what was the demeanor of the convicted impostor at the moment of discovery.

The court decreed that Arnaud du Tilh, called "Pansette," had been convicted of the several crimes of imposture, falsehood, substitution of name and person, adultery, rape, sacrilege, detention (*plagiat*),* and larceny, and condemned him to do penance before the church of Artigues, on his knees, in his shirt, with head and feet bare, a halter round his neck, and a burning taper in his hand, asking pardon of God and the king, Martin Guerre, and Bertrande de Rols, his wife; that he should then be handed over to the common executioner, who should conduct him through the most public ways to the house of Martin Guerre, in front of which, upon a scaffold purposely prepared, he should be executed by hanging, and his body burned. All his effects were forfeited to the crown. The decree bears date September 12th, 1560.

While under condemnation in the prison at

* Holding possession of a person who properly belongs to another.

Artigues, Arnaud made a full confession, declaring that the imposture had first suggested itself to him on his being mistaken by intimate friends of Martin Guerre for that individual himself. From them and others he gleaned all necessary particulars of the past life and ways of the man he proposed to personate.

BH APM ZOf2
Famous cases of circumstantial
Stanford Law Library
3 6105 044 101 983

346
P54

Date Due

Apr
Oct 7 '39
Mar14'28WE
Sep13'
Jan29 WE
Mar2 SA
Jul 6
Jul11 SA
Nov3
Mar18
Apr9
Apr23
Oct24
Nov2
May
Oct3